



Packet Related Material

Memo

Agenda

Calendar

Other Notices and Agendas:

None

Legislation for Discussion:

Res 03-08 To Authorize an Advance from the Special Non-Reverting Improvement Fund to Make Improvements to the Animal Shelter

- Memo from John Freeman, Director of Public Works; Balance in Special Non-Reverting Improvement Fund (Otherwise Known as the "Westside Fund"); Draft Site Plan and Floor Plan for Animal Shelter

Contact: John Freeman at 349-3410 or freemanj@city.bloomington.in.us
Laurie Ringquist at 349-3492 or ringquil@city.bloomington.in.us
Tom Guevara at 349-3412 or guevarat@city.bloomington.in.us

Res 03-17 To Approve the First Amendment to an Interlocal Cooperation Agreement Between the City and Monroe County for a Combined Emergency Dispatch System

- Memo from Jennifer Lloyd, Risk Attorney; Amendment; Interlocal Agreement Annotated with Changes

Contact: Mike Hostetler at 349-3307 or hostetlm@city.bloomington.in.us
Jennifer Lloyd at 349-3549 or lloydj@city.bloomington.in.us

App Ord 03-06 To Specially Appropriate from the Telecommunications Non-Reverting Fund (Infrastructure) Expenditures Not Otherwise Appropriated (Appropriating Funds for High-Speed Data Connectivity to Seven City Sites)

(Please see the July 3rd Packet for Summary, Legislation, and Background Materials)

Contact: Greg Volan at 349-3485 or volang@city.bloomington.in.us

Res 03-16 To Authorize the City to Enter into a “Guaranteed Energy Savings Contract” with Energy Systems Group (Improvements to Dillman Road Wastewater Treatment Plant)

- Memo from Mike Phillips, Director of Utilities; Summary of Projects; Costs and Savings Sheet; Energy Savings Contract (Proposal dated June 20, 2003 and Report dated June 30, 2003 are Available in the Council Office)

*Contact: Mike Phillips at 349-3650 or phillipm@city.bloomington.in.us
Vickie Renfrow at 349-3426 or renfrowv@city.bloomington.in.us*

Memo

Alert: Budget Books Expected by Wednesday Night

Chair of Meeting: Sabbagh

**Four Items for Discussion at
Committee of the Whole on Wednesday, July 16, 2003**

There are four items on your agenda for next Wednesday's Committee of the Whole. These items are briefly noted in the following section. The three resolutions appear on our agenda for the first time and are summarized further in the memo and included in this packet. The one appropriation ordinance can be found in the July 3rd packet.

Items for Discussions at July 16th Committee of the Whole

Res 03-08 Authorizing an Advance of \$370,000 from the Special Non-Reverting Improvement Fund for Constructing an Addition onto the Animal Shelter

Res 03-17 Amending the Interlocal Agreement with the County Regarding the Combined Emergency Dispatch System

App Ord 03-06 Appropriating \$49,990 from the Infrastructure Portion of the Telecommunications Fund to Provide High-Speed Access to the City Network for Seven Remote Facilities

Res 03-16 Entering into a \$2.37 Million Energy Savings Contract with Energy Systems Group for Improvements to the Dillman Road Wastewater Treatment Plant

Three Resolutions Ready for Discussion on Wednesday, July 16th

Res 03-08 - Authorizing an Advance of \$370,000 from the Special Non-Reverting Improvement Fund for Constructing an Addition onto the Animal Shelter

Res 03-08 authorizes an advance of \$370,000 from Special Non-Reverting Improvement Fund (otherwise known as the "Westside Fund") to help pay for the construction of an addition onto the Animal Shelter. The Animal Shelter is owned by the City and the underlying ground is owned by the Monroe County Humane Association (MCHA). These two entities have been talking about building a new facility or expanding the existing one because it is old and too small for the animals housed there and the people who work with and visit them.

As you may recall, the City set aside \$130,000 from the Cumulative Capital Improvement Fund in the 2003 budget and the Mayor committed at that time to setting aside a total of \$500,000 for improving the Animal Shelter over the next few years. According to the memo from John Freeman, director of Public Works, the MCHA has agreed to transfer the land to the City and allow the City to construct an addition.

The addition will expand the shelter by about 4,000 s.f. and cost about \$500,000. It will be used as an "adoption center" and the existing kennels will be used for strays and other animals with special needs. The adoption center will feature 14 dog kennels, 3 puppy kennels, and a room where people can be introduced to an adoptable dog. It will also have space for separate cat and kitten colony rooms, from 20 to 24 cat kennels, and another room where people can be introduced to an adoptable cat. Along with these areas, there will be storage space, an education center, four offices and a break room for employees.

The resolution authorizes a \$370,000 advance from the Westside Fund to complete the \$500,000 funding necessary for constructing the addition. The Westside Fund has been in existence since 1979 and receives its revenues from payments made by west side industries in lieu of their annexation by the City. Over the years its purpose has expanded from serving the needs of areas ready for annexation to serving broader municipal purposes. One of the most common of those purposes has been to advance monies for capital projects which are then repaid with future revenue (often in the form of proceeds from bonds). This resolution directs the Controller to repay the Westside Fund by transferring \$185,000 from the Cumulative Capital Improvement funds in 2004 and 2005. The Cumulative Capital Improvement Fund receives its

revenues as part of our annual property tax levy. According to a spreadsheet provided by Susan Clark, the Westside Fund had a balance of \$1.146 million at the beginning of this year, and with these repayments and anticipated revenues and expenditures will have a balance of at least \$1.3 million in 2004.

Res 03-17 - Amending the Interlocal Agreement with the County Regarding the Combined Emergency Dispatch System

Res 03-17 would amend the interlocal agreement with the County for the management, operation, and maintenance of the Combined Emergency Dispatch System. The City and the County entered into this agreement in 1998 and, with the help of a \$150,000 Build Indiana grant, combined their dispatch operations in a portion of the newly renovated JFK Law Enforcement Center.

Agreements between political subdivisions (otherwise known as "interlocal agreements") are authorized and governed by I.C. 36-1-7-3. This statute requires, among other things, that the agreements include the duration and manner of financing, staffing and supplying the joint undertaking. It also authorizes the creation of joint boards to oversee the enterprise according the powers delegated to them by the agreement.

This agreement had an initial term of 5 years and has been automatically renewed for another 5 years. It sets forth the responsibilities of each party for maintaining the facility and operating the program. It also creates a Policy Board, comprised of five members appointed by the County Commissioners and Mayor, and an Oversight Board, comprised of the Chief of Police and the County Sheriff. The Policy Board governs the dispatch system and provides guidance to the Oversight Board, which is responsible for carrying out its day-to-day operations. These boards meet regularly in open meetings where the public may attend and observe the conduct of business.

According to the memo from Jennifer Lloyd, Risk Attorney, the amendment makes three changes to the agreement. The first change increases the minimum number of dispatchers provided by the City (from 11 to 14) and the County (from 9 to 10.5), which reflects the current levels of staffing by those entities. The second requires that a majority of the members of the Policy Board be employees of criminal justice agencies. This complies with a state requirement for boards that are responsible for setting policies for the use of state and federal criminal data bases and also reflects the current composition of the board. The third clarifies the duties of the Policy Board in regard to the exercise management control over the personnel and equipment. It also gives the board power set standards for the levels of service provided by central

dispatch to other agencies. Jennifer Lloyd indicated that this will help the Board plan for and accommodate new requests for service.

Res 03-16 - Entering into a \$2.37 Million Energy Savings Contract with Energy Systems Group for Improvements to Dillman Road Wastewater Treatment Plant

Res 03-16 authorizes the City to enter into a 10-year “Guaranteed Energy Savings Contract” with Energy Systems Group to provide services and improvements at the Dillman Road Wastewater Treatment Plant that will amount to \$2,371 million. The resolution takes advantage of a special statutory program that allows cities to arrange for facility improvements by “qualified energy providers” that are guaranteed to conserve energy and allow financing at very favorable rates. This will be the third energy savings contract for the City, all of which have been undertaken with the same provider. The first agreement involved about \$1.2 million for improvements to facilities in the Parks and Recreation, Public Works and Utilities departments (Res 99-24), and the second involved about \$250,000 for improvements at the Ice Rink (Res 01-04).

Under this program, the city invites providers to evaluate our facilities and submit a report proposing a program of services and improvements. These services and improvements are typically in the form of providing more energy-efficient windows, doors, energy control systems, lighting, heating, ventilation, or air conditioning systems.

The report must provide estimates for (1) all costs attributable to the work covered in the proposal, including the costs of design, engineering, installation, maintenance, repairs, and debt service; and (2) the amounts by which the energy consumption or operating costs will be reduced. *In addition, the “qualified energy provider” must guarantee that the savings in energy and operating costs due to the energy conservation measures will cover the costs of the payments for those measures and that they will reimburse the city for the difference between the guaranteed savings and the actual savings.*

In this case, ESG Energy Systems Group (which is a wholly owned subsidiary of Indiana Gas, Citizen Gas and SIGECO) responded to the invitation, carried out an extensive evaluation of the Dillman Road Wastewater Treatment Plant, and submitted an energy savings proposal. The proposal offers a package of improvements costing \$2.371 million that would result in a total savings of \$2.988 million (\$1.446 million in energy savings and \$1.543 million in operational savings) during the 10-year period of the contract.

According to statute, the payments may be in the form of annual installments over a period of 10 years or the life span of the energy savings measure, whichever is less. In this case, there will be 10 annual installments with an interest rate of 3.9%. These installments are subject to appropriations by the Council and do not constitute debt for purposes of constitutional and statutory debt limitations.

Statute requires the Council to file the completed guaranteed energy savings contract, the energy consumption costs prior to the agreement, and the documentation of the savings and capital expenditures with the Department of Commerce within 60 days of the execution of the agreement. Statute also requires the Council to submit an annual report to the Department of Commerce in the year after each installment payment, indicating the savings resulting from the energy savings contract.

The proposal is briefly summarized here and is more thoroughly set forth in the packet material. Please note that the last item (Process Controls – \$356,000) was included in the proposal, but was not included in the contract. The Utilities staff want to explore this item further before committing to it, and the resolution authorizes them to do so by arranging a change order.

Improvements to Dillman Road Wastewater Treatment Plant Proposed in Energy Savings Contract with ESG

Project	Cost	Annual Savings
Campus Outdoor Lighting	\$64,205	\$7,000
Conversion of HVAC system from Electric to Gas and Purchase of 2 of 3 Units	\$74,872	\$23,999
Conversion from Coarse to Fine Aeration (Bubble) Basin Diffuser System	\$923,962	\$117,057
Modification to Digester (Using a Sludge Thickening Process)	\$636,884	\$68,957
Replace 800 HP with 600 HP Blower and Motor	\$671,570	\$70,284
Totals	\$2,371,493	\$287,297

Included in Proposal, But Not in Proposed Contract
(Possible Inclusion in the Future)

Process Controls	\$356,153	\$25,000
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The Utilities staff has reviewed the proposals and presented them to the Utility Services Board, which recommended the City enter into the contract once its staff had resolved the scope of work. Vickie Renfrow, staff from Utilities, and a representative from Energy Systems Group will be at the committee meeting to answer your questions.

Happy Birthday, Mike Diekhoff!

**NOTICE AND AGENDA
BLOOMINGTON COMMON COUNCIL COMMITTEE OF THE WHOLE
7:30 P.M., WEDNESDAY, JULY 16, 2003
COUNCIL CHAMBERS
SHOWERS CENTER, 401 N. MORTON**

Chair: David Sabbagh

1. Resolution 03-08 To Authorize an Advance from the Special Non-Reverting Improvement Fund to make Improvements to the Animal Shelter

Asked to Attend:	John Freeman,	Director of Public Works
	Laurie Ringquist	Director of Animal Control/Shelter
	Tom Guevara,	Controller

2. Resolution 03-17 To Approve the First Amendment to an Interlocal Cooperation Agreement Between the City and Monroe County for a Combined Emergency Dispatch System

Asked to Attend:	Mike Hostetler	Chief of Police
	Jennifer Lloyd	Risk Attorney

3. Appropriation Ordinance 03-06 To Specially Appropriate from the Telecommunications Non-Reverting Fund (Infrastructure) Expenditures Not Otherwise Appropriated (Appropriating Funds for High-Speed Data Connectivity to Seven City Sites)

Asked to Attend:	Gregory Volan,	Chief Information Officer
	Tom Guevara,	Controller

4. Resolution 03-16 To Authorize the City to Enter into a “Guaranteed Energy Savings Contract” with Energy Systems Group (Improvements to Dillman Road Wastewater Treatment Plant)

Asked to Attend:	Mike Phillips,	Director of Utilities Department
	Representative	Energy Systems Group
	Vickie Renfrow	Assistant City Attorney

City of
Bloomington
Indiana

City Hall
401 N. Morton St.
Post Office Box 100
Bloomington, Indiana 47402



Office of the Common Council
(812) 349-3409
Fax: (812) 349-3570
email: council@city.bloomington.in.us

To: Council Members
From: Council Office
Re: Calendar for the Week of
July 14, 2003 – July 19, 2003
Date: July 12, 2003

Monday, July 14, 2003

4:00 pm Commission on the Status of Black Males, McCloskey
5:00 pm Utilities Service Board, Service Center – 1969 S. Henderson St.

Tuesday, July 15, 2003

4:00 pm Board of Public Safety, Police Department – 220 E. 3rd St.
5:30 pm Board of Public Works, Council Chambers
5:30 pm Bloomington Human Rights Commission, Hooker Room
5:30 pm Public Transportation Corporation Board – Special Session, Transit – 130 W. Grimes Ln.
6:30 pm Animal Control Commission, McCloskey

Wednesday, July 16, 2003

12:00 pm Economic Development Commission, Hooker Room
2:00 pm Hearing Officer, Hooker Room
7:00 pm Council of Neighborhood Associations, McCloskey
7:30 pm Common Council Meeting – Committee of the Whole, Council Chambers

Thursday, July 17, 2003

7:30 am Domestic Violence Task Force, Hooker Room
8:00 am Property Maintenance Code Workshop – HAND Department, Council Chambers
8:00 am Housing Authority Board of Commissioners, Housing Authority – 1007 N. Summit Dr.
9:00 am Step Ahead Board, Stonebelt – 2670 E. 2nd St.
12:00 pm Redevelopment Commission, McCloskey
2:00 pm Child Care Development Fund Oversight Committee, McCloskey
3:30 pm Bloomington Municipal Facilities Corporation, Hooker Room
4:00 pm Utilities Service Board – Ad Hoc Subcommittee, Service Center – 1969 S. Henderson St.
5:45 pm Dr. Martin Luther King Jr. Birthday Commission, McCloskey

Happy Birthday, Mike Diekhoff!

Friday, July 18 2003

No meetings are scheduled for today.

Saturday, July 19, 2003

7:00 am Bloomington Community Farmers' Market, Showers Commons

RESOLUTION 03-08

TO AUTHORIZE AN ADVANCE FROM THE SPECIAL NON-REVERTING IMPROVEMENT FUND TO MAKE IMPROVEMENTS TO THE ANIMAL SHELTER

- WHEREAS, the Bloomington Common Council adopted Ordinance 79-74, “To Create a Special Non-Reverting Improvement Fund,” which provides that all monies received by the City pursuant to the 1979 Agreement In Lieu of Annexation as approved and ratified by Ordinance 79-73, shall be placed in the Special Non-Reverting Fund; and
- WHEREAS, Ordinance 87-31 provides that all monies received by the City pursuant to the 1987 Agreement In Lieu of Annexation as approved and ratified by Ordinance 87-30, shall be placed in the Special Non-Reverting Fund; and
- WHEREAS, Ordinance 79-74, with subsequent amendments thereto, provides that the monies in the fund may be used for various purposes; and
- WHEREAS, Ordinance 92-08 provides that the monies in the Special Non-Reverting Fund may be used by the City of Bloomington “for advances on expenditures for capital improvement projects in anticipation of receipt of anticipated tax revenues”; and
- WHEREAS, Ordinance 92-08 further provides that “upon receipt of anticipated tax revenues, said advances shall be repaid from said revenues”; and
- WHEREAS, the existing animal shelter is inadequate for housing and caring for animals and too small for staff to function effectively; and
- WHEREAS, the City owns the land underlying the existing shelter and the Monroe County Humane Association (MCHA) owns the shelter building and leases it to the City, and
- WHEREAS, the City and MCHA desire to cooperate in expanding and renovating the building in 2003 and 2004 to provide a positive, welcoming environment for the public, and for the animals and staff; and
- WHEREAS, the estimated cost of the renovation and expansion (the “Project”) is \$500,000; and
- WHEREAS, the MCHA has made a commitment to deed the animal shelter building to the City, and the Board of Public Works has committed to leasing office space in the expanded facility to MCHA; and
- WHEREAS, the City has included \$130,000 in the 2003 budget for the Cumulative Capital Improvements (Rate) Fund for the Project; and
- WHEREAS, the City desires to advance \$370,000 from the Special Non-Reverting Fund for the Project to be reimbursed from the Cumulative Capital Improvements (Rate) Fund;

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION I. The Common Council of the City of Bloomington hereby approves and authorizes expenditures from the Special Non-Reverting Fund in an amount not to exceed three hundred, seventy thousand dollars (\$370,000) for the Project.

SECTION II. The controller is hereby directed to include \$185,000 in the 2004 budget and \$185,000 in the 2005 budget of the Cumulative Capital Improvements (Rate) Fund to be transferred to the Special Non-Reverting Fund.

SECTION III. This resolution shall be in full force and effect from and after its passage by the Common Council of the City of Bloomington and approval of the Mayor.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2003.

CHRIS GAAL, President
Bloomington Common Council

ATTEST:

REGINA MOORE, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2003.

REGINA MOORE, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this _____ day of _____, 2003.

JOHN FERNANDEZ, Mayor
City of Bloomington

SYNOPSIS

This resolution approves a \$370,000 advance from the Special Non-Reverting Fund for renovation and expansion of the existing animal shelter to be reimbursed from the Cumulative Capital Improvements (Rate) Fund in 2004 and 2005.

MEMORANDUM

To: Common Council

From: John Freeman

Date: July 2, 2003

Re: Resolution 03-08

This resolution is to authorize an advance from the "Westside Fund" of \$370,000 to help fund the construction of a 4,000 sq. ft. addition to the animal shelter. The money would be paid back from the Cumulative Capital Improvement (Rate) Fund, with one-half being repaid in 2004 and the remainder in 2005.

The 2003 Public Works budget includes \$130,000 from the Cumulative Capital Improvement (Rate) Fund for this project. The total estimated cost of the proposed addition is \$500,000. Local contractors estimate the actual construction cost to be about \$100 per square foot for a total of \$400,000. Furniture, fixtures and finishes are estimated at about \$100,000. Construction is anticipated to begin in the fall once this resolution is approved and the Monroe County Humane Association (MCHA) has deeded the building to the City.

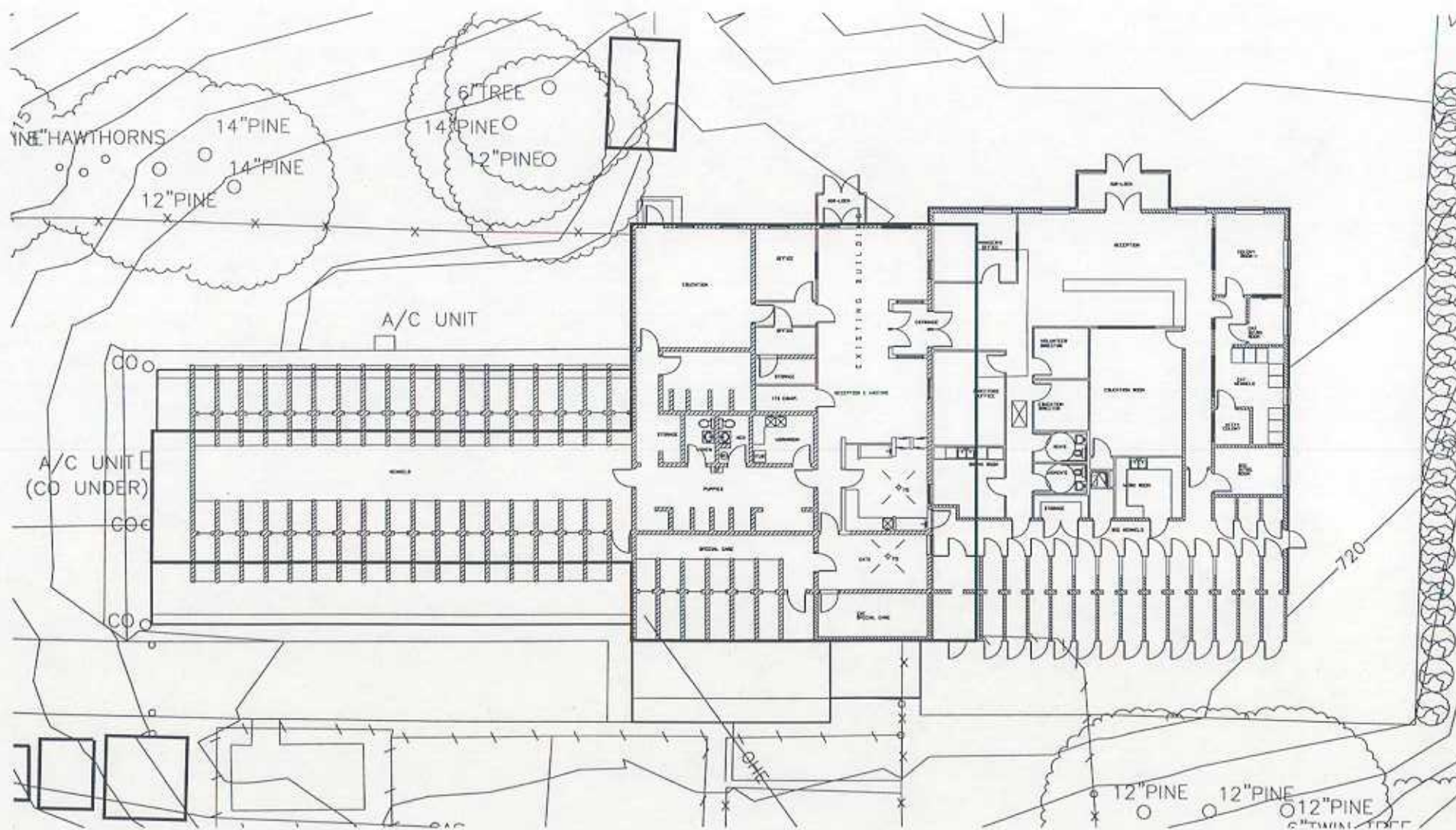
The proposed addition will be an Adoption Center. It will include 14 dog kennels, 3 puppy kennels, a cat colony room with space for about 15 cats, a kitten colony room with space for about 12 kittens, and room for 20-24 cat kennels. Other important features include a dog introduction room, a cat introduction room, storage and work space, and an education center where prospective adopters can learn more about what to expect when they take their critter home. There will also be offices for the director, manager, education director and volunteer coordinator, and a break room for staff.

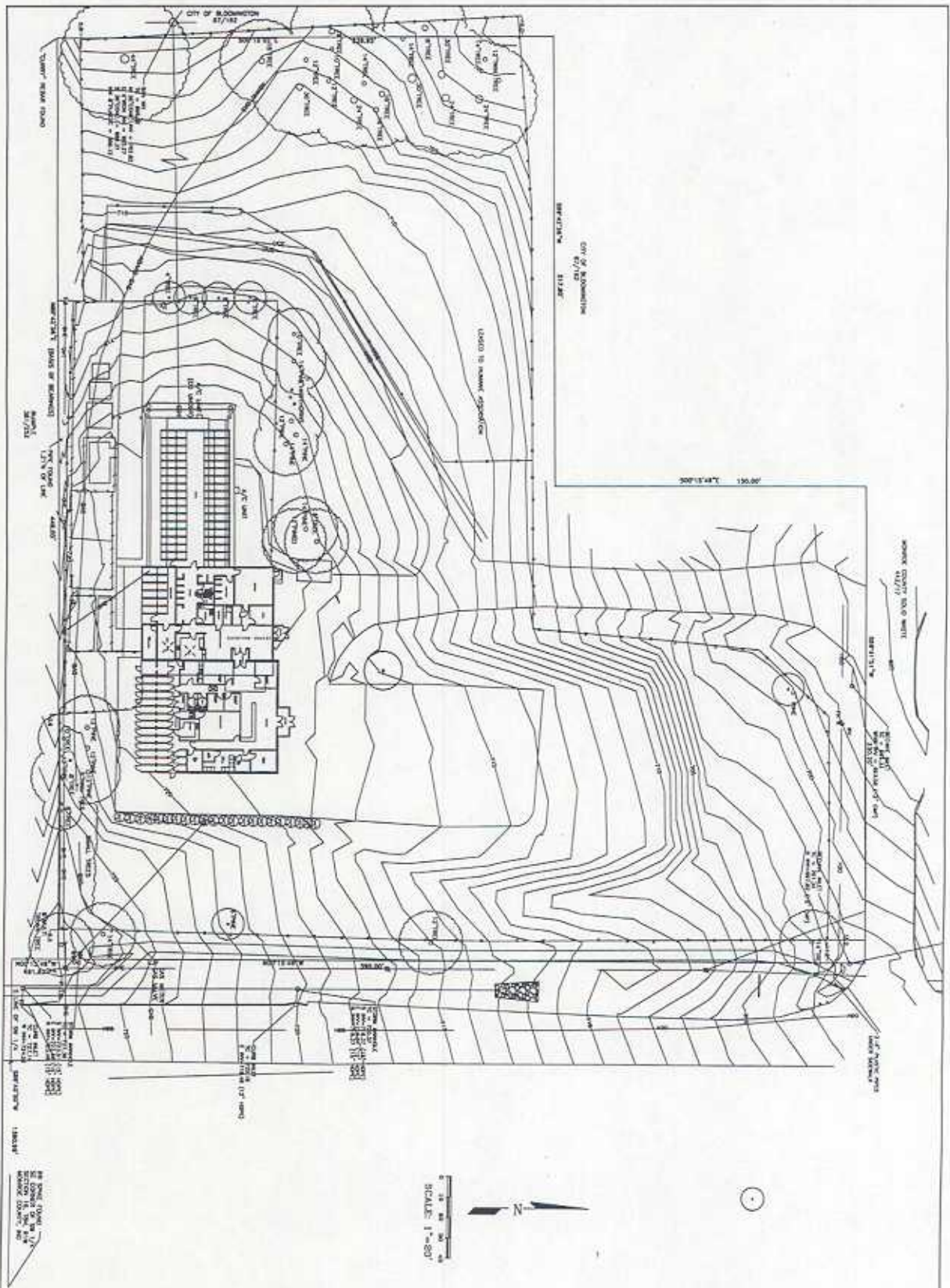
All kennels in the existing space will be retained for strays and special needs animals. A "Special Care" cat room will be added. The MCHA will lease approximately 665 sq. ft. of the existing office space. The intake room will be upgraded and the lobby area will be renovated to house the Animal Control Officers and to take in strays and give-ups.

City of Bloomington
Special Non-Reverting Improvement Fund
Statement of Revenues, Expenditures and Changes in Fund Balance

	1995	1996	1997	1998	1999	2000	2001	2002	<i>Projected 2003</i>	<i>Projected 2004</i>	<i>Projected 2005</i>
Revenues											
In Lieu of Annexation Payments	147,038	133,170	137,704	164,197	135,380	164,650	148,845	173,653	199,230	200,000	200,000
Interest on Investments	4,647	2,150	8,413	21,321	12,741	26,547	28,488	16,350	11,947	12,027	16,915
Miscellaneous Reimbursements	32,000	14,469	3,743	5,605	400	-	-	-	-	-	-
Total Revenues	183,685	149,789	149,860	191,122	148,521	191,197	177,333	190,002	211,177	212,027	216,915
Expenditures											
Personnel	41,629	48,281	6,155	-	-	-	3,539	1,801	-	-	-
Supplies	2,817	6,503	-	-	-	-	-	-	-	-	-
Other Services & Charges	107,412	28,634	35,685	410,103	-	-	-	-	25,200	6,000	6,000
Capital Outlays	-	-	-	-	-	-	-	-	370,000	-	-
Total Expenditures	151,857	83,419	41,839	410,103	-	-	3,539	1,801	395,200	6,000	6,000
Other Financing Sources											
Operating Transfers In	29,180	336	325,000	-	-	-	221,000			185,000	185,000
Operating Transfers Out	(100,000)	(37,000)	(37,000)	-	-	-					
Excess (Deficiency) of Revenues	(38,992)	29,706	396,021	(218,981)	148,521	191,197	394,794	188,201	(184,023)	391,027	395,915
Fund Balance - January 1	55,710	16,718	46,424	442,444	223,464	371,985	563,182	957,976	1,146,177	962,154	1,353,181
Fund Balance - December 31	16,718	46,424	442,444	223,464	371,985	563,182	957,976	1,146,177	962,154	1,353,181	1,749,096

Notes: Amounts for 1995 through 2002 are from Balance Sheet Audit Trails.





RESOLUTION 03-17

**TO APPROVE THE FIRST AMENDMENT TO AN INTERLOCAL COOPERATION
AGREEMENT BETWEEN THE CITY AND MONROE COUNTY FOR
A COMBINED EMERGENCY DISPATCH SYSTEM**

WHEREAS, the City of Bloomington and Monroe County are authorized by I.C. 6-1-7-1, *et seq.*, to enter into agreements for the joint exercise of their powers for the provision of services to the public; and

WHEREAS, on January 23, 1998, the City of Bloomington and Monroe County entered into an Interlocal Agreement to establish a combined emergency dispatch system; and

WHEREAS, the parties have determined that an amendment to the Interlocal Agreement is necessary;

NOW, THEREFORE BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION I. The First Amendment to Monroe County and City of Bloomington, Indiana Interlocal Cooperation Agreement for Combined Emergency Dispatch System, a copy of which is attached hereto and made a part hereof, is hereby approved.

SECTION II. If any sections, sentence or provision of this ordinance, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION III. This ordinance shall be in full force and effect from and after its passage by the Common Council of the City of Bloomington and approval of the Mayor.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2003.

CHRIS GAAL, President
Bloomington Common Council

ATTEST:

REGINA MOORE, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2003.

REGINA MOORE, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this _____ day of _____, 2003.

JOHN FERNANDEZ, Mayor
City of Bloomington

SYNOPSIS

This resolution approves the First Amendment to the 1998 City – County interlocal agreement that established the combined emergency dispatch system. The Amendment accomplishes three goals. First, it increases the minimum number of staff that the City and County will each provide to the Dispatch center. (The new contractual minimums reflect the actual staffing that is currently in place, so the amendment puts no additional demand on either entity.) Second, it formalizes a requirement by NCIC/IDACS (federal and state criminal justice reporting systems) that a majority of the members of the Policy Board be current employees of a criminal justice agency (the current Policy Board meets this requirement). And third, it adds two new powers/duties to the Policy Board which include: exercising management control over the equipment and personnel of the Central Emergency Dispatch System as set forth in 240 IAC 5-2-10(e) and establishing and defining levels of service to partnership agencies and customers.

**CITY OF BLOOMINGTON
INTERDEPARTMENTAL MEMORANDUM**

To: Members of the Common Council
From: Jennifer Lloyd/Risk Attorney
Date: July 8, 2003
Subject: Resolution 03-17

Resolution 03-17, 'To Approve the First Amendment to an Interlocal Cooperation Agreement between the City and Monroe County for a Combined Emergency Dispatch System,' is included in your packets.

The primary purpose of this Amendment was to formalize Central Dispatch's compliance with a requirement by NCIC/IDACS (federal and state criminal justice reporting systems) that the body setting policy for use of the NCIC/IDACS system be a 'criminal justice agency.' This can be achieved by ensuring that a majority of the members of the Central Dispatch Policy Board are current employees of a criminal justice system. At present, the makeup of the Policy Board already meets this requirement, but the Amendment crystallizes the requirement for future appointments.

The Amendment also takes the opportunity to update staffing requirements for the Dispatch Center by creating a higher minimum number of dispatchers that the City and County must each provide. This new number reflects the staffing currently in place.

Finally, the Policy Board's powers and duties are expanded to 'establish and define levels of service to partnership agencies and customers.' This will allow Central Dispatch to better clarify its roles and capabilities as it responds to increasing community demands placed upon it.

At their respective meetings on June 17, the Central Dispatch Policy Board and the Board of Public Safety each voted to recommend that the City Council pass Resolution 03-17 and execute the Amendment. All Monroe County parties to the agreement have also given it their approval.

FIRST AMENDMENT TO
MONROE COUNTY AND CITY OF BLOOMINGTON, INDIANA
INTERLOCAL COOPERATION AGREEMENT FOR
COMBINED EMERGENCY DISPATCH SYSTEM

This First Amendment to the Monroe County and City of Bloomington, Indiana Interlocal Cooperation Agreement for Combined Emergency Dispatch System, entered into on this ____ day of _____, 2003, by and between the Board of Commissioners of the County of Monroe, Indiana and the City of Bloomington, Indiana

WITNESSETH:

WHEREAS, on January 23, 1998 the parties hereto entered into an Interlocal Cooperation Agreement for Combined Emergency Dispatch System (hereinafter, the "Interlocal Agreement"); and

WHEREAS, the parties have determined that an amendment to the Interlocal Agreement is necessary;

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions set forth herein, the County and the City hereby agree as follows:

1. Article III, Section 1, Paragraph A of the Interlocal Agreement shall be amended to read as follows:

“A. Staffing: The City shall provide fourteen (14) full-time dispatch personnel to the Dispatch System. The County shall provide ten and one-half (10.5) full-time dispatch personnel to the System. Each party shall remain the employer of its personnel for all intents and purposes, and shall bear all costs associated with such employment. Additional personnel shall be provided as necessary pursuant to agreement by the parties.”

2. Article IV, Section 1 shall be amended to read as follows:

“**Section 1. Policy Board Makeup:** The Policy Board shall be made up of five members. Two members shall be appointed by the County Commissioners and two shall be appointed by the Mayor. The fifth member shall be appointed by joint decision of the Commissioners and the Mayor.

“A majority of the members of the Policy Board shall be current employees of criminal justice agencies.”

3. Article IV, Section 4 shall be amended to read as follows:

“Section 4. Powers and Duties of the Policy Board: The Policy Board shall have the following powers and duties:

- A. To exercise management control over the equipment and personnel of the Central Emergency Dispatch System as set forth in 240 IAC 5-2-10(e).
 - B. To set standards for employee qualifications and training.
 - C. To appoint supervisors for an initial period lasting from February 1 through June 1, 1998;
 - D. To define a merit basis for subsequent selection of supervisors and other dispatch personnel, and to select supervisors according to that merit system;
 - E. To give direction to and resolve disputes of the Oversight Board;
 - F. To accept bids and award contracts for equipment purchase and maintenance and for provision of other necessary services;
 - G. To enter into contracts to provide dispatch services for other emergency providers;
 - H. To accept funds for the Dispatch System, to be deposited with the Monroe County Auditor and to establish a budget therefore;
 - I. To submit claims to the Monroe County Auditor for payment;
 - J. To adopt rules of order for Board meetings and other related proceedings;
 - K. To establish and define levels of service to partnership agencies and customers; and
 - L. To promulgate all other rules, standards and policies necessary for the day-to-day operation of the Dispatch System and which are not in violation of the terms of this Agreement, federal, state or local law, or collective bargaining agreements of City and County employees.”
4. All other terms and conditions of the Interlocal Agreement shall remain unchanged.

WHEREFORE, the parties hereto have executed this Agreement as of the date first set forth.

COUNTY OF MONROE
BOARD OF COMMISSIONERS

CITY OF BLOOMINGTON

Joyce Poling, President

John Fernandez, Mayor

Iris Kiesling, Vice President

Herb Kilmer, Member

Attest:

_____, 2003
Barbara Clark, Auditor
Monroe County

Approved this ____ day of _____, 2003 by the Monroe County Council.

Doug Duncan, President
Monroe County Council

Attest:

_____, 2003
Barbara Clark, Auditor
Monroe County

Acknowledged this ____ day of _____, 2003 by the Sheriff of Monroe County.

Stephen E. Sharp, Sheriff

Approved this ____ day of _____, 2003 by the Bloomington Common Council.

Chris Gaal, President
Bloomington Common Council

Attest:

_____, _____, 2003
Regina Moore
City Clerk

Acknowledged this ____ day of _____, 2003 by the Bloomington Chief of Police.

Michael Hostetler, Chief of Police

**INTERLOCAL COOPERATION AGREEMENT FOR
COMBINED EMERGENCY DISPATCH SYSTEM**
*As Modified by the "First Amendment" to be Approved by Bloomington Common Council
Resolution 03-17*

Guide to Annotations Appearing After Indented Phrases That Begin "First Amendment - Section"

~~Strikeout~~ = deleted text

Bold = added text

This Interlocal Cooperation Agreement, entered into on this _____ day of January, 1998, by and between the Board of Commissioners of the County of Monroe, Indiana and the City of Bloomington, Indiana

WITNESSETH:

WHEREAS, Indiana Code 36-1-7, *et seq.*, allows local government entities to make the most efficient use of their powers by enabling them to contract with other governmental entities for the provision of services to the public; and

WHEREAS, Monroe County, Indiana (hereinafter, "County") and the City of Bloomington, Indiana (hereinafter, "City"), have been cooperating and working together to implement a Combined Emergency Dispatch System which will combine the present dispatch systems of the County Sheriff's Department and the City Police Department for the purpose of providing high quality, efficient communications services for public safety providers and the general public within Monroe County, Indiana; and

WHEREAS, such Combined Emergency Dispatch System shall be located in the newly renovated Bloomington Police Headquarters building at 220 East Third Street and shall be staffed by members of the Police and Sheriff's Departments; and

WHEREAS, the implementation of this System shall be to the benefit of the public; and

WHEREAS, the County and the City desire to cooperate, between themselves, with respect to the management, operation and maintenance of this System; and

WHEREAS, the County and the City each possess the power and authority to provide police protection and cooperation between the parties in the coordination of these services, and the utilization of this System will permit a more efficient utilization of resources;

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions set forth herein, the County and the City hereby agree as follows:

ARTICLE I
PURPOSE AND DURATION OF AGREEMENT

Section 1. Purpose: The purpose of this Agreement is to provide a method for the management, operation and maintenance of the Combined Emergency Dispatch System (hereinafter, "Dispatch System"). This Agreement further defines the duties, obligations, rights and responsibilities of the County and the City to and between one another with respect to the matters described herein.

Section 2. Duration: This Agreement shall be in full force and effect as of the date of its execution and shall remain in full force and effect for a period of five years. At the end of such period, this Agreement shall automatically renew for a period of five years unless one of the parties provides notice of termination as set forth in Article VII, Section 1, below.

ARTICLE II
LOCATION AND MAINTENANCE OF DISPATCH CENTER; COMMENCEMENT

Section 1. Location: The Dispatch System shall be housed in a Dispatch Center located at the newly renovated Bloomington Police Headquarters at 220 East Third Street, Bloomington.

Section 2. Maintenance of Dispatch Center: Operational overhead costs of the Dispatch Center, including but not limited to building maintenance, electricity, and other utility costs, shall be paid by the City. Custodial services for the Center shall also be provided by the City. Telecommunications costs are not governed by this Section.

Section 3. Commencement of Operations: The Dispatch System shall commence operations on February 1, 1998 or as soon thereafter as is practicable.

ARTICLE III
PERSONNEL, EQUIPMENT AND TELECOMMUNICATIONS

Section 1. Personnel

First Amendment - Section 1

A. Staffing: The City shall provide ~~eleven (11)~~ **fourteen (14)** full-time dispatch personnel to the Dispatch System. The County shall provide ~~nine (9)~~ **ten and one-half (10.5)** full-time dispatch personnel to the System. Each party shall remain the employer of its personnel for all intents and purposes, and shall bear all costs associated with such employment. Additional personnel shall be provided as necessary pursuant to agreement by the parties.

B. Scope of Responsibilities: The primary responsibility of each staff member described in Paragraph A, above, shall be to dispatch emergency calls made to the Dispatch

Center. All personnel shall dispatch any and all emergency calls; there shall be no separation of responsibilities by geographical or other jurisdiction.

Section 2. Equipment:

A. Consoles: The Dispatch Center shall have five (5) dispatch consoles. All of these consoles shall be provided by the City. The City shall retain title in these five consoles. Thereafter, additional and replacement consoles shall be financed as is other equipment, as set forth in Part C, below.

B. Antenna: A Dispatch Center antenna shall be purchased from grant funds received by the Policy Board. The existing antenna and transmitters currently at the Justice Building shall remain in place.

C. Central Electronic Bank: The Central Electronic Bank (CEB) currently located at the Justice Building shall be installed at the Dispatch Center. The Oversight Board shall purchase a desktop control unit for the Monroe County Sheriff's radio system at the Justice Building, such purchase to be made from grant funds at an estimated cost of \$12,500.

D. Other Equipment: The purchase cost of all other Dispatch Center equipment which is not purchased from grant funds shall be shared equally by the City and County.

E. Maintenance and Insurance: The cost for maintenance and insurance on all equipment shall be shared equally by the City and County.

Section 3. Telecommunications Costs:

A. NCIC/IDACS: The cost of and responsibility for maintaining NCIC/IDACS databases shall remain the responsibility of the individual parties.

B. Communication Lines: The cost of installing communications lines (including electronic communications) from the Dispatch Center to City and County offices shall be paid from grant funds received by the Policy Board. The cost of maintaining such communications lines between the Dispatch Center and other City offices shall be borne by the City. The cost of maintaining such lines between the Center and other County offices shall be borne by the County.

C. Other Telecommunications Costs: Other telecommunications costs which are not described above, and which are not paid from grant funds or from the revenue generated by the 911 contract with Ameritech, shall be borne equally by the parties.

Section 4. Capital Costs: After the Dispatch Center has been operational for the period of one year, the City may petition the Policy Board for reimbursement of a pro rata share of construction costs for the Dispatch Center, such reimbursement to be made from grant funds received by the Policy Board and not otherwise expended for costs related to the Dispatch Center.

ARTICLE IV
POLICY BOARD

Section 1. Policy Board Makeup: The Policy Board shall be made up of five members. Two members shall be appointed by the County Commissioners and two shall be appointed by the Mayor. The fifth member shall be appointed by joint decision of the Commissioners and the Mayor.

First Amendment - Section 2

~~At least one of each of the Commissioners' and Mayor's appointed members must have background experience in and/or knowledge of public safety and/or public safety communications.~~

A majority of the members of the Policy Board shall be current employees of criminal justice agencies.

Section 2. Terms of Policy Board Members: The Mayor and the Commissioners each shall initially appoint their members as follows: one for a term of one year and one for a term of three years. The initial joint appointment shall be made for a period of two years. Thereafter, all appointments shall be for a term of three years. The terms of the initial members appointed for one year shall expire on January 1, 1999, and the terms of the other initial members shall expire on January 1 of the respective years following.

Section 3. Meetings of the Policy Board: The Policy Board shall hold a minimum of one meeting every two months, and may hold additional meetings as the Board deems necessary. Such meetings shall be held in compliance with the Indiana Open Door law.

Section 4. Powers and Duties of the Policy Board: The Policy Board shall have the following powers and duties:

First Amendment - Section 3

A. To exercise management control over the equipment and personnel of the Central Emergency Dispatch System as set forth in 240 IAC 5-2-10(e);

A.B. To set standards for employee qualifications and training;

~~**B.C. To appoint supervisors for an initial period lasting from February 1 through June 1, 1998;**~~

~~**C.D. To define a merit basis for subsequent selection of supervisors and other dispatch personnel, and to select supervisors according to that merit system;**~~

~~**D.E. To give direction to and resolve disputes of the Oversight Board;**~~

~~E. F.~~ To accept bids and award contracts for equipment purchase and maintenance and for provision of other necessary services;

~~F. G.~~ To enter into contracts to provide dispatch services for other emergency service providers;

~~G. H.~~ To accept funds for the Dispatch System, to be deposited with the Monroe County Auditor and to establish a budget therefore;

~~H. I.~~ To submit claims to the Monroe County Auditor for payment;

~~I. J.~~ To adopt rules of order for Board meetings and other related proceedings; and

K. To establish and define levels of service to partnership agencies and customers; and

~~J. L.~~ To promulgate all other rules, standards and policies necessary for the day-to-day operation of the Dispatch System and which are not in violation of the terms of this Agreement, federal, state or local law, or collective bargaining agreements of City and County employees.

ARTICLE V OVERSIGHT BOARD

Section 1. Oversight Board Makeup: The Oversight Board shall be comprised of the Sheriff and the Chief of Police.

Section 2. Meetings: The Oversight Board shall hold a minimum of one meeting every month, and may hold additional meetings as the Board deems necessary. Such meetings shall be held in compliance with the Indiana Open Door Law. A memorandum of each meeting shall be prepared and presented to the Policy Board.

Section 3. Powers and Duties of Oversight Board: The powers and duties of the Oversight Board shall be the following:

A. To administer the rules, standards and policies promulgated by the Policy Board;

B. To maintain the budget established by the Policy Board;

C. To make recommendations to the Policy Board as necessary;

D. To supervise the day-to-day operations of the Dispatch System; and

E. To carry out all other powers and duties as are delegated to the Oversight Board by the Policy Board.

ARTICLE VI
ACCOUNTING

The Auditor of Monroe County is authorized to receive, disburse, and account for all moneys of the Combined Emergency Dispatch System.

ARTICLE VII
AMENDMENT AND SEVERABILITY OF AGREEMENT

Section 1. Amendment: This Agreement may be modified only by a written amendment signed by both parties hereto.

Section 2. Severability: The invalidity, illegality or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of the Agreement shall be construed and enforced as if it did not contain the particular provision to be held void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

ARTICLE VII
TERMINATION

Section 1. Notice of Termination: In the event that one of the parties intends to terminate the Agreement rather than renewing it as set forth in Article I, Section 2, that party shall provide notice in writing to the other party no later than one year prior to the intended date of termination.

Section 2. Division of Property:

A. Real Property: All real property shall remain the property of the City, and the County shall have no claim thereto.

B. Personal Property: Upon termination of this Agreement, the Policy Board shall recommend a plan of distribution of all jointly held personal property for the approval of the Monroe County Board of Commissioners and the Bloomington Common Council.

WHEREFORE, the parties hereto have executed this Agreement as of the date first set forth.

COUNTY OF MONROE
BOARD OF COMMISSIONERS

CITY OF BLOOMINGTON

Norman Anderson, President

John Fernandez, Mayor

Kirk White, Vice President

Iris Kiesling, Member

Attest:

, December 19, 1997

Barbara Clark, Auditor
Monroe County

Approved this 13th day of January, 1998 by the Monroe County Council.

John Lee Smith, President
Monroe County Council

Attest:

, January 13, 1998

Barbara Clark, Auditor
Monroe County

Approved this 21st day of January, 1998 by the Bloomington Common Council.

President
Bloomington Common Council

Attest:

, January 21, 1998

Patricia Williams
City Clerk

RESOLUTION 03-16

TO AUTHORIZE THE CITY TO ENTER INTO A “GUARANTEED ENERGY SAVINGS CONTRACT” WITH ENERGY SYSTEMS GROUP (Improvements to Dillman Road Wastewater Treatment Plant)

- WHEREAS, the provisions of recently enacted Indiana Code Section 36-1-12.5 permit units of local government to enter into “Guaranteed Energy Savings Contracts” with providers of various energy savings services and capital improvements; and
- WHEREAS, the City of Bloomington Utilities Department invited proposals for Guaranteed Energy Savings Contracts in accordance the statutorily required procedure for work at the Dillman Road Wastewater Treatment Plant; and
- WHEREAS, a proposal was received from Energy Systems Group for services and capital improvements which, as required by statute, are guaranteed to pay for themselves within a ten-year period, and said proposal includes financing for the up-front costs of the project; and
- WHEREAS, staff review of the proposal indicates that it is in the best interest of the City of Bloomington to enter into a Guaranteed Energy Savings Contract with Energy Systems Group as the provider; and
- WHEREAS, the Utilities Service Board of the City of Bloomington Utilities Department has adopted a Resolution recommending that the City enter into such a Guaranteed Energy Savings Contract with Energy Systems Group as the provider, contingent upon a final determination by staff as to which items of the proposal are likely to be most beneficial and, therefore, best to include in the final contract documents and financial commitment; and
- WHEREAS, the Common Council finds after reviewing the report issued by Energy Systems Group and upon recommendation of staff that:
- a) the amount the City would spend on the proposed conservation measures is not likely to exceed the amount to be saved in energy conservation or operating costs for the length of the contract; and
 - b) Energy Systems Group has submitted a written guarantee that the savings in energy conservation measures will cover the payments for the measures and that Energy Systems Group will reimburse the City for the differences between the guaranteed savings and actual savings;

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION I. The City of Bloomington shall enter into a Guaranteed Energy Savings Contract with Energy Systems Group as the provider pursuant to the provisions of Indiana Code Section 36-1-12.5 allowing such projects.

SECTION II. The Common Council hereby accepts the proposal dated June 20, 2003, from Energy Systems Group, and further approves the documents attached hereto which establish the terms and conditions of the contract and financing for the project, including any subsequent change orders as long as they involve items included in the proposal dated June 20, 2003.

SECTION III. The Common Council hereby authorizes the Mayor to execute any and all documents necessary to enter into said contractual relationship on behalf of the City of Bloomington.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2003.

CHRIS GAAL, President
Bloomington Common Council

ATTEST:

REGINA MOORE, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2003.

REGINA MOORE, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this _____ day of _____, 2003.

JOHN FERNANDEZ, Mayor
City of Bloomington

SYNOPSIS

This resolution authorizes the City to enter into a “Guaranteed Energy Savings Contract” with Energy Systems Group as the provider, pursuant to the provisions of Indiana Code Section 36-1-12.5, which permits the financing of the initial costs of such a project and requires that the cost of the project be recouped within a ten-year period from savings realized from the project. The terms and conditions of the contract and financing for the project are approved and the Mayor is authorized to execute documents on behalf of the City.

**RESOLUTION TO ENTER INTO
GUARANTEED ENERGY SAVINGS CONTRACT
WITH ENERGY SYSTEMS GROUP**

WHEREAS, the provisions of recently enacted Indiana Code Section 36-1-12.5 permit units of local government to enter into "Guaranteed Energy Savings Contracts" with providers of various energy savings services and capital improvements; and,

WHEREAS, the City of Bloomington Utilities Department invited proposals for Guaranteed Energy Savings Contracts in accordance the statutorily required procedure for work at the Dillman Road Wastewater Treatment Plant; and

WHEREAS, a proposal was received from Energy Systems Group for services and capital improvements which, as required by statute, are guaranteed to pay for themselves within a ten-year period, and said proposal includes financing for the up-front costs of the project; and,

WHEREAS, Staff review of the proposal indicates that it is in the best interest of the City of Bloomington Utilities Department to go forward with participation in said Guaranteed Energy Savings Contract project with Energy Systems Group as the provider, contingent upon a final determination by Staff as to which items of the proposal are likely to be most beneficial and, therefore, best to include in the final contract documents and financial commitment;

NOW, THEREFORE, BE IT RESOLVED by the Utilities Service Board of the City of Bloomington Utilities Department that the City of Bloomington Utilities Department go forward with participation in the Guaranteed Energy Savings Contract project, and the Board further recommends to the City of Bloomington Common Council that it approve a Resolution to be presented to it which authorizes participation in said project with said provider

ADOPTED this 30th day of June, 2003, by the Utilities Service Board of the City of Bloomington Department of Utilities.

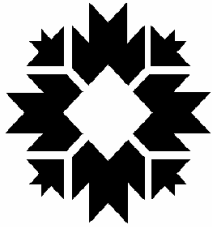
CITY OF BLOOMINGTON UTILITIES SERVICE BOARD

L. Thomas Swafford
L. Thomas Swafford, President

Jeffrey L. Elman
Jeffrey Elman, Vice President

ATTEST:

Nora L. Whaley
NORA L. WHALEY
SECRETARY TO THE UTILITIES SERVICE BOARD



**CITY OF BLOOMINGTON
MEMORANDUM**

TO: Members of the Common Council

FROM: Michael Phillips, Director, Department of Utilities

RE: Resolution 03-16

DATE: July 11, 2003

The City Utilities Department is requesting that the Common Council approve Resolution 03-16 which authorizes the City to enter into a “Guaranteed Energy Savings Contract” with Energy Systems Group as the provider of services and capital improvements. A “Guaranteed Energy Savings Contract” is an agreement between a “qualified provider” and an owner to reduce the energy costs by a specified amount. It provides an opportunity to improve facilities and reduce operating costs while at the same time conserving energy and protecting the environment.

This project will cover improvements to the exterior lighting, HVAC, aeration system, and includes a blower replacement at the Dillman Road Wastewater Treatment Plant. One item contained in the original proposal deals with plant control modifications. This includes automating controls for several plant operations. A final decision concerning this option has not been reached, therefore it has not been included in the contract terms but may be added by a change order at a later time.

Exterior Lighting:

New and improved lighting through out the plant will increase the safety of our employees and improve security.

HVAC:

Existing heating and ventilation units in the clarifier basin and bar screen room will be replaced with more efficient equipment.

Aeration System

The existing coarse bubble aeration units will be replaced with new fine bubble diffusers. This will decrease the amount of air that will be required and greatly reduce energy consumption. In addition improvements will be made to the digester operation that will improve performance and reduce energy usage.

Blower Replacement

Because of the aeration system improvements less air will be required. The project will replace one 800 horsepower centrifugal blower with a new more efficient 600 horsepower unit.

I believe that these worthwhile projects will address Utility needs and will result in significant energy savings. Please contact me if you have any questions.



SECTION 9 – FINANCIAL ASPECTS

- Explain Qualified Provider's plan for providing competitive pricing.

Energy Systems Group strives to provide competitive pricing. The usual process for acquiring bids is to request bids from three subcontractors with the same scope of work. This insures that we are providing the City of Bloomington with the best possible price within the same scope of work.

- All proposed Energy Conservation Measures (ECM) shall be described in detail and detailed calculations shall be included for each ECM. These ECM's should be presented in a spreadsheet delineating the ECM cost, simple payback, energy, O&M savings.

Table 9-1: Financial Summary

ECM	Energy Conservation Measures (ECMs)	TOTAL INSTALLED COST	Energy Savings (ANNUAL)	Operational Savings	Simple Payback
1.0	Campus outdoor lighting	\$64,205	\$0	\$7,000	9.2
2.0	Electric to gas HVAC conversion	\$74,872	\$3,999	\$20,000	3.1
3.1	Aeration Basin Diffuser Conversion	\$923,962	\$91,057	\$26,000	7.9
3.2	Digester modifications	\$636,884	\$40,957	\$28,000	9.2
4.1	400 hp Motor Replacement	\$107,700	\$0	\$10,000	7.2
4.2	600 hp New Blower	\$671,570	\$18,284	\$52,000	9.6
5.0	Process Controls	(\$356,153)	(\$0)	(\$25,000)	(14.2)
		\$2,066,855	\$154,297	\$477,000	4.6

← NOT IN CONTRACT

\$2,371,493

133,000

7.8

Table 9-2: Operational Savings Breakout

ECM	Energy Conservation Measures (ECMs)	TOTAL	Annual Maintenance	Annual Repair	Planned Upgrades	Total Annual Operational Savings
1.0	Campus outdoor lighting	\$47,850	\$2,000	\$1,000	\$4,000	\$7,000
2.0	Electric to gas HVAC conversion	\$61,380	\$4,000	\$6,000	\$10,000	\$20,000
3.1	Aeration Basin Diffuser Conversion	\$688,600			\$26,000	\$26,000
3.2	Digester modifications	\$474,650	\$4,500	\$1,000	\$22,500	\$28,000
4.1	400 hp Motor Replacement	\$102,630		\$5,000	\$14,000	\$19,000
4.2	600 hp New Blower	\$500,500	\$5,000	\$23,000	\$24,000	\$52,000
5.0	Process Controls	\$265,430	\$8,000	\$2,000	\$15,000	\$25,000
		\$2,141,040	\$23,500	\$38,000	\$115,500	\$177,000



SECTION 7 – TECHNICAL ASPECTS OF THE PROPOSAL

The Dillman Plant was built in 1978 to serve the south part of Bloomington and has a peak capacity of 20 Mgd based on a BOD of 150 mg/l and ammonia of 15 mg/l. While many upgrades and modifications to the plant have been completed there are significant utility reduction opportunities still available.

The facility was surveyed for energy conservation and facility improvement measures. The items described in this section represent the package that has been developed in partnership with the City of Bloomington Utilities Department. These co-authored solutions represent over three months of effort on the part of **Energy Systems Group** and the Utilities engineering staff.

The following section details the scope of work for each facility improvement measure. Energy savings calculations follow at the end. Technical data and manufacturers cut sheets for the equipment specified is located in the appendix.

In general, the scope of work includes:

- Engineering, as-built drawings of finished work
- All equipment, parts, material and labor to accomplish the work described below
- Required permits
- Project Management and coordination
- Regularly scheduled project meetings
- Equipment check, test and start-up
- Training on all new equipment
- Operations and maintenance manuals for new equipment and systems

General Exclusion for the following Items:

- Basin draining and cleaning
- Asbestos abatement



1.0 Exterior Lighting

The exterior lighting for the entire facility was surveyed for energy savings opportunity and enhancement. Proper lighting design encompasses distribution as well as intensity. In some areas, specifically the clarifier basin, insufficient lighting creates safety and security issues, which will be addressed in the improvements below.

The recommended retrofits fall into these areas:

- 1.1 Clarifier/Aeration Basin – Install twelve new twelve-foot tall poles with 250-watt metal halide lamps. Replace fourteen wall packs with TWH 250-watt wall packs.
- 1.2 Road Lighting – Replace twenty-two mercury vapor fixtures with shoebox style 250-watt metal halide heads. Existing poles will be reused, except for four of the poles that are damaged and will be replaced.
- 1.3 Pump Building – Replace three canopy lights with 175-watt metal halide. Replace four wall packs with TWH 250-watt wall packs.
- 1.4 Chlorine Building – Replace four canopy lights. Replace six wall packs with TWH 250-watt wall packs.
- 1.5 Maintenance Building – Replace seven wall packs with TWH 250-watt wall packs. Clean the three canopy lenses.

Mercury vapor lighting around drying fields are excluded from this scope of work. All existing ballasts that are removed and contain PCB's will be disposed of pre IDEM requirements.

2.0 HVAC

There are three heating and ventilating units in the clarifier basin. One HVAC unit is for the rotary screen room, one for the grit building, and one for the blower building. Only the clarifier basin unit uses the original electric duct heaters. The others have been removed and are no longer in service. The roof mounted fan units are original to the building (30 years old) and are approaching the end of their useful life. The other unit to be replaced is a ceiling mounted heating unit in the bar screen room of the pump building.



Clarifier Basing AHU-1



Energy Systems Group recommends replacing these two units with gas-fired units to take advantage of the lower cost of fuel for natural gas. The existing units will be replaced with new units.

Table 1: Electric Heating & Ventilating Units

ID	Building	Existing Fan	Scfm	Heating Capacity (Btuh)
B-AHU-1	Clarifier Basin	Trane PCC 21 (Serial #B78M03227)	12,000	650,000
B-AHU2	Grit	Trane PCC 10 (Serial #B78M03228)	Excluded	
B-AHU3	Rotary Screen	Trane PCC7 (Serial #B78M03229)	Excluded	
P-AHU1	Pump – Bar Screen Room	n/a	1,500	80,000

3.0 Fine Bubble Aeration

3.1 Aeration tank modifications

On average the aerators consume an average of 21,356 cubic feet per minute (CFM) of air. By replacing the coarse bubble aerators with fine bubble diffusers, the oxygen transfer efficiency increases and an average of 10,678 cfm will be required. This fifty percent reduction in air is a result of the smaller bubbles having a higher surface area than the coarse bubble which is the dominate variable in oxygen to water transfer rates.

The existing coarse bubble static diffusers in the four aeration basins will be removed and 8,500 new 9" diameter Sanitaire ceramic diffusers installed. The remaining two aeration tanks are only used for a few days per year and do not have an adequate payback for retrofit of the diffusers.

The current diffuser layout is not laid out efficiently for the current plug flow process. The new layout will concentrate the diffusers in the areas where peak oxygen demand is required and taper off for the areas where demand is lower. The new projected peak blower horsepower requirement for just the aeration basins is 576.



Aeration Basin and Diffusers



3.2 Digester tank modifications

Energy Systems Group will modify the digester operation using a sludge thickening process to change the average total solids concentration from 1.6% to a range of 4-6%. This will provide three advantages over the current process: 1) reduced disposal costs, 2) reduce blower horsepower and corresponding electrical demand, and 3) reduction in need from two digesters to only one, thereby allowing for future capacity. The new projected peak blower horsepower requirement for just the digester basins is 263.

To accomplish this change over **Energy Systems Group** will replace the existing static diffusers with 4,100 fine bubble diffusers, add a structural wall down the middle of the back-up digester, and add one new SS AquaDDM 75 horsepower floating mixer. The new 24" thick wall by 20 feet tall will require a 5 foot footing in the floor to be installed with a 2' x 2' key.



800 Hp Blower

4.0 Blower Upgrades

By implementing the diffuser projects the air demands on the blower system will be reduced over fifty percent and the existing 800 horsepower blowers will be over sized for the majority of year. There are two options to providing redundant capacity and improved part-load efficiencies.

- 4.1 Motor Retrofit - Replace one of the 800 horsepower blower motors with a high efficiency 400 horsepower motor. While this solution is less expensive, it does not offer any energy savings or control enhancement.

← C33 Decision
upgrade 800
to
new 400

The 5 KV feeder wire to the blower will be replaced, a new 75 KVAR capacitor will be installed. The motor and blower shafts will be connected and aligned.

4.2 Blower Replacement

ESG recommends replacing one of the 800 horsepower centrifugal blower and motor with one new Turblex 600 horsepower unit with inlet vane control. The inlet vane control offers constant efficiency over a range of output. Since the blower operates mostly at part load conditions, this technology provides significant energy savings over conventional multi-stage blowers. The new unit will be base-loaded such that it will operate for most of the year. When excess air volume is required, the other blowers will be staged on.



400 Hp Blower Motor



Specified Equipment

Turblex Blower - Model KA22SV-GL225 600 hp
Base spring vibration isolation kit
Motor winding RTD's
Factory start-up (3 days)
Reverse rotation switch
Compressor x-y-z vibration probes
Automatic discharge and blow-off butterfly valve

The 5 KV feeder wire to the blower will be replaced, and a new 100 KVAR capacitor will be installed in place of the existing 150 KVAR. All connector piping will be modified to accommodate the new blower.

5.0 Plant Control Modifications (NOT IN CONTRACT)

The existing SCADIA is connected to the majority of the plant heavy equipment, but some areas remain under manual control. Every four hours a tour of the plant is made where dissolved oxygen (DO) is measured in each of the tanks and the air valves are manually opened or closed based on demand. This is an area, which could be easily automated to modulate the valves controlling the air entering each tank. Savings would result from improved DO control and the reduction in blower horsepower.



Aeration Tank Air Valve

Two other areas, which would speed data, are the sludge blanket monitoring in the clarifiers and the mixed liquor probes for the aeration tanks. Each of these items requires a person to manually check the tank in question. By connecting these data, gathering sensors to the information network savings would found in time and improved control.

- 5.1 Dissolved Oxygen control for system. Provide and install (4) DO Endress-Hauser DO probes, and (6) electric actuators for aerations basins. The existing valves will be reused. The two remaining tank which are used for only a few days per year would have the hardware in place to be used if another tank was rotated out of use for cleaning.
- 5.2 Provide and Install (4) clarifier basin sludge level monitors.
- 5.3 Provide and Install (4) mixed liquor probes for suspended solids measurement in each aeration basin.



All points will be mapped back to the existing SCADA control system. Two new Allen-Bradley PCS panels will be installed to accommodate new points. All new points will be added to the existing SCADA graphics system.

Table 2 : Points List

Description	Analog Input	Analog Output	Measurement	Qty of Sensors
DO Probe	6		Ppm O2	4
Air Valves		6	% open	6
Sludge Blanket Monitors	6		Inches/feet	4
Mixed Liquor Probes	4		Total suspended solids	4

GUARANTEED ENERGY SAVINGS PERFORMANCE CONTRACT

THIS AGREEMENT (herein sometimes "Agreement" and sometimes "Contract"), made this 24th day of July 2003, by and between City of Bloomington, Indiana, a municipal corporation (hereinafter called "Municipal Corporation" or "Owner") and Energy Systems Group, LLC, an Indiana limited liability company (hereinafter called "Contractor"),

WITNESSETH, That:

WHEREAS, Contractor has submitted to Owner a proposal for the installation of energy related upgrades at facilities owned by Owner and located in Monroe County, Indiana (herein the "Facilities"), the specific details of such proposal are outlined in the Exhibits; and

WHEREAS, Owner has accepted the Contractor's proposal as outlined in the Proposal, and the Owner and Contractor desire to enter into this Agreement in order to memorialize their respective agreements and undertakings with respect to the Project (as defined hereinafter).

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements herein contained, the parties hereto agree as follows:

1. Integration; Conflict; Agreement Conditional. The parties hereby incorporate by reference the same as if fully set forth herein, the following documents and instruments, all of which together are herein referred to as the "Contract Documents":

- Exhibit A - Installment Payment Contract
- Exhibit B - Escrow Agreement
- Exhibit C - Certificate of Resolutions
- Exhibit D - Opinion of Municipal Corporations' Counsel
- Exhibit E - Arbitrage Certificate
- Exhibit F - Certificate of Incumbency
- Exhibit G - UCC Financing Statement
- Exhibit H - IRS Form 8038G
- Exhibit I - Scope of Work
- Exhibit J - Performance Guarantee
- Exhibit K - Support Services

The Contract Documents also shall include any permissible change orders issued pursuant to this Agreement.

In the event there is a conflict between the provisions of this Agreement and any other Contract Document, the provisions of this Agreement shall be controlling with respect to the subject matter hereof.

The rights, duties, and obligations of the Owner and Contractor under this Agreement and under all other Contract Documents, and any rights of any third party beneficiary or any assignee of either party hereto, are subject to and conditioned upon the Contractor's deposit of those funds required to be delivered by Contractor to the Escrow Agent for deposit into the Project Fund to be maintained under the Escrow Agreement.

2. Scope of Project. For purposes hereof, the term "Project" shall mean and include the installation of the energy conservation measures and related upgrades ("ECM's" or "Measures") at the Owner's Facilities in the amount of \$2,371,493 as outlined in the Proposal.

The Contractor represents and warrants (i) that the Project constitutes the installation of "energy conservation measures" as defined in I.C. 36-1-12.5-1 et seq. (herein the "Act"), and (ii) that this Agreement is a "guaranteed energy savings contract" as defined in the Act. The Contractor further represents and warrants that it is a "qualified provider" of energy conservation measures, as defined in the Act. The Contractor also represents and warrants that it has issued the report containing all data and information required by I.C. 36-1-12.5-6.

The Contractor further represents and warrants that the Project will result in energy savings in the total amount of \$1,542,970 and operational savings in the total amount of \$1,445,940 during the first ten (10) year period following completion of the Project. The Contractor represents and warrants that such total savings in the amount of \$2,988,910 (herein the "Total Guaranteed Savings") exceeds the Owner's total cost of the Project. The Contractor hereby guarantees that it will reimburse the Owner for the difference between the Total Guaranteed Savings and the actual savings realized by virtue of the installation of the energy conservation measures. The parties stipulate and agree that the operational and energy savings shall be considered fully satisfied upon the Owner's Final Acceptance of the Project (as defined hereinafter). The energy savings and operational savings will be realized over a period of ten (10) years following final installation of the Project, which term of years the Contractor represents and warrants is less than the average life of the energy conservation measures. The term of this agreement shall extend for ten (10) years effective with the Owner's acceptance of all energy conservation measures.

3. General Obligations and Rights of Contractor. Unless otherwise expressly provided herein or directed in writing by Owner, Contractor shall do all acts and provide all things necessary to perform and complete the Project properly, efficiently, in a good and workmanlike manner, and in compliance with all laws and regulations. Contractor shall apply for, secure, and obtain all necessary permits, fees, and licenses, which may be required in connection with the Project.

3.1 Warranty; Maintenance. Contractor hereby warrants to Owner that all materials furnished by Contractor, if any, and all workmanship performed by Contractor in connection with the Project, shall be in accordance with the general industry standards of the mechanical and electrical construction industry; shall be performed in a competent, good and workmanlike manner on a timely basis and in compliance with the Contract Documents, and all pertinent laws, rules and regulations; and shall be free from any and all faults or defects in material and workmanship. Contractor further warrants, guarantees, and represents that the completed Project shall be suitable, fit, and capable for the intended use and purpose thereof, according to the Contract Documents. Contractor shall promptly remedy any and all defective materials or workmanship furnished by Contractor upon receipt of written notice thereof from Owner. If required by Owner, Contractor shall furnish satisfactory evidence as to kind and quality of materials and equipment used in connection with the Project.

The warranty and guaranty set forth herein shall continue to be effective for a period of one (1) year following Owner's Final Acceptance or beneficial use of the energy conservation measures, whichever comes first. Owner shall give Contractor written notice of all defective work, specifically detailing the deficiencies to be corrected, and Contractor shall repair or otherwise remedy such defective work in an expeditious manner.

CONTRACTOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, OTHER THAN THOSE WARRANTIES SPECIFICALLY STATED IN THIS AGREEMENT. To the extent possible, Contractor shall assign to Owner all warranties that Contractor receives from its vendors and/or subcontractors which are or are to become permanent features of the Project.

3.2 Approvals. Upon completion of the Project, the Contractor shall obtain approval of the installation of the energy conservation measures constituting the Project from the Indiana Department of Health, the Office of the State Fire Marshal, the Office of the State Building Commissioner, and any other State agency designated by the Act or any other State statute or regulation. The installation of the energy conservation measures constituted in the Project also shall be approved by an architect or engineer

licensed under I.C. 25-4 or I.C. 25-31, such approval to be obtained at the expense of the contractor. The receipt of all such approvals (together collectively, the "Approvals") shall constitute a condition precedent to the Contractor's entitlement to receive the final payment of the Contract Price (as defined hereinafter) and the payment of all Retainage (as defined hereinafter) withheld with respect to each installment payment of the Contract Price.

3.3 Indemnification. Contractor shall indemnify, defend (at Owner's option), and hold harmless Owner, the agents, employees, and representatives of the Owner and any assignee of the Contractor (herein the "Indemnified Parties") against all liability and loss as a result of negligence or misconduct in connection with the Project by Contractor, any subcontractor, or the agents, employees, or representatives of Contractor or any subcontractor, including any injury (including death) sustained by or any damage to the property of, any person; provided however, that Contractor shall not be responsible for any injury (including death), damage, or loss (including reasonable attorneys fees and disbursements) which is caused by the sole negligence of an Indemnified Party, nor shall Contractor be held responsible for the concurrent negligence of an Indemnified Party.

Contractor shall be liable for, and agrees to indemnify, save and hold Owner, its successors and assigns, and any assignee of the Contractor, harmless from the payment of any sum of money whatsoever (including reasonable attorneys' fees and expenses) on account of any laborer's, mechanic's, materialman's or any other lien against Owner's property related to Contractor's performance of the Project, unless the lien is caused by some fault of Owner or some person or entity acting on Owner's behalf.

Owner shall indemnify, defend (at Contractor's option) and hold harmless Contractor, and the officers, shareholders, directors, and employees of the Contractor and any assignee of the Contractor (herein the "Indemnified Parties") against all liability and loss as a result of the negligence or misconduct in connection with the Project by Owner and agents, employees or representatives of Owner, including any injury (including death) sustained by or any damage to the property of, any person; provided, however, that Owner shall not be responsible for any injury (including death), damage or loss (including reasonable attorneys fees and disbursements) which is caused by the sole negligence of an Indemnified Party, nor shall Owner be held responsible for the concurrent negligence of an Indemnified Party.

3.4 Bonds. Before entering upon the performance of this Agreement, the Contractor shall execute for the benefit of Owner, a good and sufficient Performance Bond and Payment Bond, in form

acceptable to Owner. Each bond shall be in an amount equal to the total Contract Price (as defined below in Section 5 of this Agreement), and the provisions of Indiana Code 36-1-12-13.1 and Indiana Code 36-1-12-14, if applicable to this Project, shall become a part of the terms of such bonds.

The Performance Bond shall also be a guarantee for the repair or replacement of any portion of the Project found by the Owner to be defective to and including the date of Owner's Final Acceptance of the Project. The Payment Bond shall be a guarantee for the payment for labor, materials, and equipment furnished for use in the performance of Contractor's obligations hereunder. The Performance and Payment Bond will cease effective the date of the Owner's Final Acceptance of the Project. Effective immediately after, a Maintenance Bond will be provided for the one-year period commencing on the date of the Owner's Final Acceptance of the Project in the amount of 10% of the total Contract Price. The surety which executes the Performance Bond and Payment Bond shall waive any right to independent notice under this Agreement if the Contractor receives such notice, and consents to any extensions of time, modification, waiver, forbearance, or change which may be made in any of the terms and conditions of the Agreement by the parties or by their successors or assigns. Notwithstanding any other provision of this Agreement or the bonds, in no event and in no manner shall coverage under the Performance Bond and Payment Bond extend to Section 3.5, Energy Savings Guarantee, as set forth in Exhibit B Performance Guarantee Agreement, or any related provisions.

3.5 Limitation of Liability. The total liability of Contractor on all claims, whether in contract, warranty, tort, strict liability, indemnity, or otherwise, arising out of the performance of this Agreement, shall not exceed the Contract Price. IN NO EVENT WILL CONTRACTOR BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, SPECULATIVE, PUNITIVE, OR REMOTE DAMAGES, OTHER THAN INTEREST COSTS OR OTHER COSTS WHICH OWNER MAY INCUR AS A RESULT OF CONTRACTOR'S FAILURE TO COMPLETE THE PROJECT IN A TIMELY MANNER.

3.6 Insurance.

3.6.1 Obtaining Proper Insurance. Contractor shall not commence performance hereunder until (i) it has obtained and Owner has approved all insurance coverage required by this Section 3.6; and (ii) Owner has been furnished with a certificate of insurance properly evidencing and confirming that (a) Owner is an additional named insured, and (b) such insurance coverage is in effect and will not be canceled or materially altered without thirty (30) calendar days prior written notice to Owner. All insurance provided by

Contractor hereunder shall provide for a waiver of subrogation against Owner. In the event that subcontractors are not covered by the Contractor's policies of insurance, each subcontractor shall secure policies of insurance, which meet the requirements of this Section 3.6.

3.6.2 Amount of Insurance. Contractor shall take out and maintain, at its sole cost and expense, the following insurance coverage during the term of this Agreement and all other times during which Contractor, its employees, agents, or subcontractors shall be present at the Facilities, whether performing or correcting any portion of the Project.

3.6.2 (a) Worker's Compensation, Employer's Liability, and Occupational Disease Insurance. Statutorily required worker's compensation insurance, including employer's liability and occupational disease coverage, to the extent provided by the Worker's Compensation Act and the Occupational Disease Act of the State of Indiana, on all of Contractor's employees engaged in the Project;

3.6.2 (b) Public Liability. Commercial general liability insurance (including contractual, independent contractors, explosion, and product/completed operations coverages) against damage because of bodily injury, including death, or damage to property of others, such insurance to afford protection to the limit of not less than One Million Dollars (\$1,000,000.00) in one occurrence, and to the limit of not less than Two Million Dollars (\$2,000,000.00) annual aggregate;

3.6.2 (c) Automobile Liability. Automobile liability insurance against damage because of bodily injury, including death, or damage to property of others as the result of the operation of any automobile, with such insurance to afford protection to the limit of not less than Five Hundred Thousand Dollars (\$500,000.00) for any one person, not less than One Million Dollars (\$1,000,000.00) in respect to any one accident, and not less than One Hundred Thousand Dollars (\$100,000.00) for property damage.

3.7 Environmental Protection. Contractor shall perform all work in connection with the Project in an environmentally sound manner and shall strictly comply with all environmental protection laws and legal requirements, including, but not limited to, statutes and regulations governing the generation, transportation, and disposal of hazardous waste.

Except as provided in the immediately following paragraph, should any discharge, leakage, spillage, emission, or pollution of any type (hereinafter called "Pollution") occur upon or from the Facilities due to the fault of Contractor or its subcontractors, Contractor shall clean or otherwise re-mediate such site and any other lands upon which Pollution occurs, to the satisfaction of Owner and any governmental authority having jurisdiction. Such re-mediation shall be performed by Contractor or someone hired by Contractor, at its sole cost, risk and expense, and Contractor shall indemnify, defend and hold harmless Owner from and against any loss, cost, liability, expense, judgment, fine, and/or penalty imposed upon or assessed against Owner as a result of any Pollution or the remediation thereof; provided, however, that the foregoing shall not prevent Contractor from seeking contribution or indemnity from any other party bearing full or partial responsibility for said Pollution; and provided further, Contractor's recourse against Owner shall be limited to Owner's own direct contribution to the occurrence of the Pollution.

In the event Contractor is unable or unwilling to complete any needed re-mediation, Owner may perform any re-mediation of such Pollution; provided, however, Contractor shall reimburse Owner for all costs and expenses incidental to such re-mediation.

4. Building Insurance. The Owner's fire and extended coverage insurance now in effect on the Facilities will cover the Owner's interest or equity in the Project; however, it will not cover the equity or interest of the Contractor nor of its materials and/or equipment at the Facilities. The coverage of the Contractor's equity and/or interest, as above, shall be the responsibility of the Contractor.

4.1 Title. Title to all energy conservation measures shall vest with the Owner upon acceptance and approving payment to the Contractor. Such title shall continue to be subject to the provisions of this Agreement. It is the intent of all parties that any transfer of title to Owner pursuant to this agreement shall occur automatically without the necessity of any bill of sale, certificate of title, or other instrument of conveyance.

The Owner shall be responsible for operating, maintaining, and insuring all energy conservation measures that are installed, except as set forth in Section 3.1. Owner shall also be responsible for any real or personal property taxes that should result and be owing from any.

5. Contract Price and Payments.

5.1 Contract Price. In consideration of Contractor's performance of the work necessary for the completion of the Project, Contractor shall be paid the sum of Two Million Three Hundred Seventy-one Thousand Four Hundred Ninety-three Dollars and no cents (\$2,371,493) (herein the "Contract Price"), in accordance with the provisions of the Installment Payment Contract (Exhibit A). Any cost and expense for the installation of the Project in excess of the Contract Price shall be and remain the sole and exclusive liability and obligation of Contractor, unless such additional cost results from the issuance of a change order by Owner. The Escrow Agreement (Exhibit B) covers payments to the Contractor from amounts deposited by the Assignee.

5.2 Completion and Inspection; Acceptance. When Contractor reasonably believes that the Project is complete at a particular Facility, it shall notify the Authorized Representative that such particular Facility, or the entire Project, as the case may be, is ready for inspection and acceptance. Within five (5) business days following such notification, Owner shall commence to conduct such inspections as it deems necessary or appropriate in order to determine that the particular Facility, or the entire Project, as the case may be, is free from defects and that the installation of the Project has been completed in strict conformity with the Contract Documents. If any aspect of the Project with respect to such Facility shall be incomplete as of the date of such inspection, the Authorized Representative shall notify Contractor in writing as to the items, which render the Project incomplete (such writing herein referred to as the "Punch List").

Contractor shall, at its expense and without further cost to Owner, undertake to perform such work as will complete the Punch List in compliance with the Contract Documents as soon as practicable. If Contractor does not satisfactorily complete the Punch List by a date thirty (30) days following Owner's submission of the Punch List (herein the "Completion Date"), Owner shall have the right to order Contractor to stop any further work in respect of the particular Facility, or the entire Project, as the case may be, and Owner shall be entitled to complete the Punch List. In such event, Contractor shall be responsible for all costs incurred by Owner in completing the Punch List and Owner shall have the right to deduct all costs from any payment then or thereafter due to Contractor. If such cost exceeds the balance of the Contract Price then or thereafter due Contractor, Contractor shall pay such excess to Owner within ten (10) days following Owner's demand therefore.

Owner will give Contractor prompt written notice of acceptance of a particular Facility or the entire Project, as the case may be, in the form of Schedule 1 (herein the "Final Acceptance"), when the following conditions have been met:

- A. Contractor shall have completed the Punch List to Owner's satisfaction and Contractor shall have corrected any other non-conforming items or condition, if any, reported to it by Owner;
- B. Contractor shall have furnished to Owner's satisfaction, evidence that all equipment and labor costs incurred or accrued in connection with a particular Facility have been paid (which evidence may include, but not be limited to (i) lien waivers and/or releases in recordable form submitted by each subcontractor employed by Contractor; (ii) a statement that all liens, claims, stop notices, attachments, taxes, and other encumbrances of every vendor and subcontractor relative to the Project, the Facilities, and materials supplied in respect thereof, have been satisfied; and (iii) a release of all liens, claims, stop notices, attachments, taxes, and other encumbrances of Contractor against Owner relative to the Project, the Facilities, and all materials in respect thereof;
- C. Contractor shall have delivered to Owner all drawings, documents, job books, operating manuals, and other documents, writings, and data required to be furnished by Contractor pursuant to the Contract Documents; and
- D. Contractor has obtained all Approvals, as required by I.C. 36-1-12.5-8.

If Owner is required to complete the Punch List, the date of Final Acceptance shall be extended to the date upon which the Project is completed by Owner, or any person retained by Owner, in accordance with the Contract Documents.

5.3 Payment of the Installment Payment Contract. Owner agrees to pay to Contractor or any Assignee the payments specified in the Installment Payment Contract attached hereto as Exhibit A. The Contract payments under the Installment Payment Contract will not be subject to any setoff, defense, counterclaim, abatement, or recoupment for any reason whatsoever.

Notwithstanding the foregoing, the Owner retains any and all rights to assert claims or defenses against the Contractor (but not any Assignee of the Installment Payment Contract). All payments under the Installment Payment Contract shall be payable out of the first available funds legally available in each fiscal year. The Owner shall include in its annual budget request for each fiscal year during the term of the Installment Payment Contract, a request to include all amounts payable under the Installment Payment

Contract in such fiscal year, and shall use all reasonable and lawful means available to secure the appropriation of money for such fiscal year sufficient to pay the Installment Payments coming due therein.

6. Independent Contractor. It is understood and agreed by the parties hereto that Contractor shall perform the Project according to its own means and methods and shall for all purposes be an independent contractor. All persons employed by Contractor in connection with the Project shall be subject only to its orders and supervision, and shall be paid directly by Contractor. Neither Owner nor its agents, servants, or employees shall have the right to direct, supervise, or control the manner or method in which Contractor or its subcontractors perform the Project, except as otherwise expressly provided herein; provided, however, Owner shall have the right to inspect the Project at any time for the purpose of determining whether the Project is being carried out in conformity with the Contract Documents.

7. Inspection; Defective Work. The Contractor shall provide sufficient, safe, and proper facilities at all times for the inspection of the work by the Authorized Representative. It shall, within twenty-four (24) hours after receiving written notice from the Authorized Representative to that effect, proceed to remove from the Facilities all materials, which fail to conform to the Contract Documents.

8. Termination for Failure to Perform; Rights Thereunder. The Contractor shall use all due diligence in an effort to complete the entire work required by this Contract within a minimum period of time. Should the Contractor at any time refuse or neglect to supply a sufficiency of properly skilled workmen or materials of the proper quality, or fail to prosecute the work with promptness and diligence, the Owner shall be at liberty, after thirty (30) days written notice to the Contractor and Contractor's failure to remedy the problem within that time period, to provide any such labor or materials and to deduct the costs thereof from any money then due or thereafter to become due to the Contractor under the Contract, and the Municipal Corporation shall also be at liberty to terminate the employment of the Contractor for the said work and to enter upon the Facilities and take possession for the purpose of completing the work to be done under this Contract, to use all materials of the Contractor available for such work, and to employ any other person or persons to finish the work and to provide such additional materials therefore as may be necessary; and in case of such discontinuance of the employment of the Contractor, the Contractor shall not be entitled to receive any further payment under this Contract until the said work shall be wholly finished, at which time if the unpaid balance of the amount to be paid under the Contract shall exceed the expense incurred by the

Owner in finishing the work, such excess shall be paid by the Owner to the Contractor, but if such expense shall exceed such unpaid balance, the Contractor shall pay the balance to the Owner. The expenses incurred by the Owner as herein provided, either for the furnishing of materials or for finishing the work, and any damage incurred through such fault of the Contractor shall be certified by the Owner, and payment shall be made upon such certification.

9. Extension of Time for Completion of Project. Should the Contractor be obstructed or delayed in the prosecution or completion of the Project by the act, negligence, delay, or default of the Municipal Corporation or by any other damage or act beyond the reasonable control of Contractor or any subcontractor, then the time herein fixed for the completion of the work shall be extended for a period equivalent to the time lost by reason of any or all of the causes aforesaid, but no such allowance shall be made unless a claim therefore is presented in writing to the Owner within five (5) business days of the occurrence of such delay.

10. No Acceptance of Defective Work. No certificate given or payment made under this Contract, except the final certificate and final payment thereon, shall be conclusive evidence of the performance of this Contract either wholly or in part; provided, that no payment or certificate, including the final payment and certificate, shall be construed to be an acceptance of defective work, improper materials or unauthorized substitutions.

11. Municipal Corporation to be Held Harmless. Municipal Corporation shall not in any manner be answerable or accountable for any violation of the city ordinances or state or federal law by the Contractor or of anyone in its employ, nor for any loss or damage arising from negligence of the Contractor, or anyone in its employ, to any person or persons and their property, and the Contractor agrees to make good to the Owner any loss, damage, or expense incurred by the Owner by reason of any such violations or negligence, on the part of the Contractor or anyone in its employ, including any subcontractor, together with reasonable attorneys' fees.

12. Contractor to Furnish Required Statements. The Contractor shall provide all statements, affidavits, waivers, and other instruments required by state or federal law or regulation or by city ordinances

or rules, at such times and in the form required by said laws, regulations, ordinances, or rules, and the Contractor hereby acknowledges receipt of notice from the Owner to furnish same.

13. Nondiscrimination in Hiring Employees. The Contractor, as required by I.C. 5-16-6-1 et seq. and I.C. 22-9-1-10, shall comply with the following:

- A. The Contractor, any subcontractor, any supplier or any sub-supplier of a party to this Contract shall not discriminate against any employee or applicant for employment to be employed in the performance of this Contract with respect to his or her hire, tenure, terms, conditions, or privileges of employment or any matter directly or indirectly related to employment, because of his race, color, religion, sex, disability, national origin, or ancestry. Breach of this provision may be regarded as a material breach of this Contract.
- B. Since this Contract involves the construction, alteration, or repair of a public building or public work, then the Contractor further agrees:
 - (1) That in the hiring of employees for the performance of work under this Contract or any subcontract hereunder, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not, by reason of race, religion, color, sex, national origin, or ancestry, discriminate against any citizen of the State of Indiana who is qualified and available to perform the work to which the employment relates;
 - (2) That the Contractor, a subcontractor, or any person on his or their behalf shall not, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Contract on account of race, religion, color, sex, national origin, or ancestry;
- C. The Contractor or any subcontractor of the Contractor shall be required to pay for each class of work on such project a scale of wages which shall in no case be less than the

common construction wages being paid in the immediate locality for such class of work. That as part of this Contract, there is incorporated by reference herein the prevailing scale of wages pursuant to I.C. 5-16-7-1 et seq.

14. Applicable State Laws Part of Contract - Conflict With. This Contract shall include in its terms all of the applicable laws of the State of Indiana, and any provision of this Contract, including the plans and specifications, which are a part of this Contract in conflict with the laws of the State of Indiana, are hereby declared to be inoperative, but the invalidity of any part of this Contract shall in no way affect the validity of the remainder of this Contract insofar as permitted by law. Special attention of the parties hereto is called to the I.C. 5-16-5-1 et seq., as amended, I.C. 5-16-7-1 et seq. as amended, and I.C. 36-1-12.5-1 et seq. as amended, which, together with all other applicable laws, are part of this Contract.

15. Miscellaneous Provisions.

15.1 Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana.

15.2 Notices. Unless otherwise specifically provided herein, any notice, consent, request, demand, report or statement (herein "Notice"), which is required or permitted to be given to or served upon either party hereto by the other party hereto under any of the provisions of this Agreement shall be in writing and deemed to be duly delivered when (i) personally delivered to the Designee, in the case of a Notice to be given to Contractor, or personally delivered to the Authorized Representative in the case of a Notice to be given to Owner, or (ii) deposited in the United States mail, registered or certified, postage prepaid, and properly addressed as follows:

If to Owner:	John Fernandez, Mayor City of Bloomington 401 North Morton Suite 250 Bloomington, IN 47402
If to Contractor:	James L. Adams, President Energy Systems Group, LLC 101 Plaza East Boulevard, Suite 320 Evansville, Indiana 47715

15.3 Claims for Damages. Any claims by either party hereto for bodily injury or damage to personal property caused by any act or omission of the other party hereto or by any of such party's employees or agents or others for whose acts it is legally liable shall be made in writing to such other party within a reasonable time after the occurrence or first knowledge of such injury or damage.

15.4 Assignment. Without Contractor's prior written consent, Municipal Corporation shall not: (a) assign, transfer, pledge, hypothecate, or grant any security interest in, or otherwise dispose of, this Agreement or the equipment or any interest in this Agreement or the Equipment or (b) sublet or lend the Equipment or permit the Equipment to be used by anyone other than Municipal Corporation or Municipal Corporation's employees.

Contractor, without the consent of the Municipal Corporation, may assign its right to receive payment hereunder in whole or in part to various assignees, their agents or trustees (each and any one hereinafter referred to as an "Assignee"). Any such assignment to an Assignee may provide that Contractor or the Assignee shall act as a collection and paying agent for holders of certificates of participation in this Agreement, or may provide that a third party trustee or agent shall act as a collection and paying agent for any Assignee, provided Municipal Corporation receives written notification of the name and address of the trustee or the agent and a copy of the pooling and fractionalization agency or trustee agreement, if any such Assignee shall have all of the assigned rights of Contractor under this Agreement. Subject to the foregoing, this Agreement shall inure to the benefit of and is binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto. Any assignment or reassignment of any of Contractor's right to receive payment hereunder shall be effective upon receipt by Municipal Corporation of a duplicate original of the counterpart document by which the assignment or reassignment is made, disclosing the name and address of each such Assignee, and where applicable, to whom further payments hereunder should be made. During the Agreement Term, Municipal Corporation covenants that it shall keep a complete and accurate record of all assignments in form necessary to comply with the Code and the regulations, proposed or existing, from time to time promulgated thereunder. Municipal Corporation agrees to acknowledge, in writing, any assignments if so requested.

Municipal Corporation agrees that, upon notice of assignment, if so instructed, it shall pay directly to the Assignee, or its Trustee or Agent without abatement, deduction or setoff, all amounts, which become due hereunder. Municipal Corporation hereby acknowledges that the Assignee is not a manufacturer, vendor, or distributor of any equipment, that Assignee has not made and will not make any representation

or warranty, express or implied, with respect to the merchantability, condition, quality, durability, design, operation, fitness for a particular purpose or suitability of the equipment, and Municipal Corporation agrees to make any such claims directly against the contractor, manufacturer and/or seller of the equipment. Municipal Corporation further agrees that it shall not assert against any Assignee, Trustee, or Agent any defense, claim, counterclaim, or setoff on account of any reason whatsoever with respect to any contract payments or other amounts due hereunder or with respect to any action brought to obtain possession of the equipment pursuant to this Agreement.

15.5 Nonwaivers and Defaults. The failure of either party hereto to insist upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provision or the relinquishment of any such rights. Except as otherwise expressly provided herein, no default by either party hereto in the performance of any of its covenants or obligations hereunder, which except for this provision would be the legal basis for the rescission or termination hereof by the other party hereto, shall give or result in such a right unless and until the party committing such default shall fail to correct the same within fifteen (15) calendar days after written notice thereof is given to such defaulting party by the other party hereto.

15.6 Remedies Cumulative. Each remedy provided for by the Contract shall be cumulative and in addition to every other remedy provided for herein, by law or in equity.

Upon the occurrence of a default, hereunder and subject to the provisions of Section 10 hereof, either party, or its assignee, may, at its option, exercise any right, remedy, or privilege which may be available to it under applicable law, including the right to (i) proceed by appropriate court action to enforce the terms of this Agreement, (ii) recover damage or breach of this Agreement, provided, however, the exercise of any right, remedy or privilege shall not contravene or affect in any manner the Owner's payment obligation set forth in the Installment Payment Contract. Notwithstanding the exercise of any right, remedy or privilege, the parties shall remain liable for all covenants and indemnities under this Agreement, and for all legal fees and other costs and expenses, including court costs, incurred with respect to the enforcement of any of the remedies listed above or any other remedy available to either party to this Agreement.

15.7 Tests. If the Contract Documents or the laws, ordinances, rules, or regulations of any public authority having appropriate jurisdiction require inspection, testing, or approval of any of the work,

Contractor shall give the Authorized Representative timely notice of Contractor's readiness for such inspection, testing, or approval and of the date thereof so that the Authorized Representative may be present to observe such inspection, testing, or approval by such public authority. Contractor shall be responsible for and pay all costs for any such inspection, testing, or approval unless otherwise provided for herein. All required licenses, permits, or certificates applicable to any such inspection, testing, or approval shall be obtained by Contractor and promptly delivered to the Authorized Representative.

15.8 Amendments. No amendment, supplement, or modification hereof shall be effective for any purpose unless the same is in writing and signed by both parties hereto, and the Contractor's assignee, if any.

15.9 Headings. The headings of sections and subsections of this Agreement are for convenience of reference only and shall not constitute, affect the meaning, construction, or effect of, any provision hereof.

15.10 Entire Agreement. This Agreement, together with the Contract Documents, represents the entire agreement between the parties hereto and supersedes all prior negotiations, representations and agreements whether written or oral.

16. Authority to Execute Contract. This Contract is executed for City of Bloomington, Indiana pursuant to a resolution of its Board, duly adopted at its regular meeting duly called and held on the 24th day of July 2003.

CITY OF BLOOMINGTON

By _____
John Fernandez

Its _____
Mayor

ENERGY SYSTEMS GROUP, LLC

By _____
James L. Adams

Its _____
President

ATTEST:

By _____
Regina Moore

Its _____
City Clerk

SCHEDULE 1

FINAL ACCEPTANCE CERTIFICATE

(To be completed and signed after installation of all ECM's)

Energy Systems Group, LLC
101 Plaza East Blvd., Suite 320
Evansville, IN 47715

Re: Guaranteed Energy Savings Performance Contract, dated as of July 24, 2003 (the "Agreement"), between Energy Systems Group, LLC (the "Contractor") and City of Bloomington, Indiana (the "Municipal Corporation").

Ladies and Gentleman:

In accordance with the Agreement, the Municipal Corporation hereby certifies and represents to, and agrees with, Energy Systems Group, LLC as follows:

All of the ECM's or Measures comprising the Project (as defined in the Agreement) have been delivered, installed, and accepted as of _____ (the "Completion Date").

Municipal Corporation has conducted such inspection and/or testing of the ECM's or Measures comprising the Project as it deems necessary and appropriate and hereby acknowledges that it accepts the Project for all purposes.

Municipal Corporation is currently maintaining the insurance coverage required by the Agreement.

No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Agreement) exists at the date hereof.

Sincerely,

CITY OF BLOOMINGTON

By _____
John Fernandez

Its _____
Mayor

Date _____

EXHIBIT A

INSTALLMENT PAYMENT CONTRACT

FOR VALUE RECEIVED, the undersigned, City of Bloomington, Indiana, (the "Municipal Corporation"), a municipal corporation organized and existing under the laws of the State of Indiana, subject to the terms and conditions hereof, hereby promises to pay to the order of Energy Systems Group, LLC (the "Contractor") or its assigns, the sum of \$2,371,493, plus interest, in immediately available funds, in installments as set forth in Schedule A-1 attached hereto and incorporated herein by reference (the "Payments"). Terms not otherwise defined herein shall have the meanings set forth in the Agreement.

Concurrently with the execution and delivery of this Installment Payment Contract, the Municipal Corporation and Contractor have entered into a Guaranteed Energy Savings Performance Contract (the "Agreement") for the acquisition and installation of energy conservation measures (as defined in IC 36-1-12.5) and related expenditures.

Payments hereunder are to be made to Energy Systems Group, LLC, 101 Plaza East Boulevard, Suite 320, Evansville, Indiana 47715, or its Assignee (hereinafter referred to as "Assignee") in consideration for the deposit of \$2,371,493 on or before August 1, 2003, into the Escrow Account created by the Escrow Agreement dated July 24, 2003, among the Contractor, the Municipal Corporation and Fifth Third Bank, as Escrow Agent (the "Escrow Agreement").

This Installment Payment Contract is issued pursuant to IC 36-1-12.5 and is entitled to the benefits and is subject to the conditions thereof. The obligations of the Municipal Corporation to make the payments required hereunder shall be absolute and unconditional without any defense or right of set-off, counterclaim, abatement, or recoupment by reason of any default by Contractor under any other agreement between the Municipal Corporation and Contractor or out of any indebtedness or liability at any time owing to the Municipal Corporation by the Contractor or for any other reason. This Installment Payment Contract is subject to annual appropriation and is not a debt of the Municipal Corporation within the meaning of Article XIII of the Indiana constitution.

The Municipal Corporation presently intends to continue this Installment Payment Contract for its entire term and to pay all Installment Payments relating thereto. The person or entity in charge of preparing the Municipal Corporation's budget will include in the budget request for each fiscal year the Installment Payments to become due in such fiscal year, and will use all reasonable and lawful means available to secure the appropriation of money for such fiscal year sufficient to pay all Installment Payments coming due therein. The

parties acknowledge that appropriation for Installment Payments is a governmental function, which the Municipal Corporation cannot contractually commit itself in advance to perform and this Installment Payment Contract does not constitute such a commitment. However, the Municipal Corporation reasonably believes that moneys in an amount sufficient to make all Installment Payments can and will lawfully be appropriated and made available to permit the Municipal Corporation's continued utilization of the ECM's in the performance of its essential functions during the term. Further, Municipal Corporation covenants that for each fiscal year in which Installment Payments are due, payments will be made from the first funds legally available in each fiscal year.

It is agreed by the parties hereto that any amounts remaining in the Project Fund or any other fund or account created under the Escrow Agreement, upon termination of this Installment Payment Contract and the Escrow Agreement, and after payment in full of the Installment Payments (or provision for payment thereof having been made in accordance with the provisions of this Installment Payment Contract or the Escrow Agreement) and fees and expenses of the Escrow Agent in accordance with this Installment Payment Contract and the Escrow Agreement, shall be paid to Energy Systems Group, LLC by the Escrow Agent in accordance with the terms of the Escrow Agreement.

The principal of this Installment Payment Contract is subject to prepayment as set forth in the applicable Schedule A-1.

No recourse shall be had for the payment of the principal or prepayment price of, or interest on this Installment Payment Contract or for any claim based hereon, against any officer, director or taxpayer, past, present, or future, of the Municipal Corporation as such, either directly or through the Municipal Corporation, under any constitutional provision, statute or rule of law, or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise.

The Municipal Corporation hereby unconditionally waives diligence, presentment, protest, notice of dishonor, and notice of default of the payment of any amount at any time payable to the Contractor under or in connection with this Installment Payment Contract. All amounts payable hereunder are payable without relief from valuation and appraisal laws.

In any case where the date of payment hereunder shall not be on a Business Day, then such payment shall be made on the next succeeding Business Day with the same force and effect as if made on the date of payment hereunder.

Municipal Corporation represents, covenants, and warrants for the benefit of Contractor and Assignee as follows:

(a) Municipal Corporation is a public body corporate and politic duly organized and existing under the constitution and laws of the State of Indiana with full power and authority to enter into this Installment Payment Contract and the transactions contemplated hereby and to perform all of its obligations hereunder.

(b) Municipal Corporation has duly authorized the execution and delivery of this Installment Payment Contract by proper action by its governing body at a meeting duly called, regularly convened, and attended throughout by the requisite majority of the members thereof or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Installment Payment Contract.

(c) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, a default hereunder exists at the date hereof.

(d) Municipal Corporation will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic.

(e) Municipal Corporation has complied with such public bidding requirements as may be applicable to this Installment Payment Contract and the acquisition by Municipal Corporation of the property described in Exhibit I attached to this Installment Payment Contract and all replacements, repairs, restorations, modifications, and improvements thereof or thereto made pursuant to this Installment Payment Contract.

(f) The Equipment listed in each of the Schedules will be used by Municipal Corporation only for the purpose of performing essential governmental or proprietary functions of Municipal Corporation consistent with the permissible scope of Municipal Corporation's authority.

(g) Upon the request of Assignee, Municipal Corporation will annually provide Assignee the current financial statements, budgets, proofs of appropriation for the ensuing budget year, and such other financial information relating to the ability of Municipal Corporation to continue this Installment Payment Contract as may be requested by Assignee.

(h) Municipal Corporation will comply with all applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code"), including without limitation Sections 103 and 148 thereof, and the applicable regulations of the Treasury Department to maintain the exclusion of the interest components of Payments from gross income for purposes of federal income taxation.

Municipal Corporation is obligated only to pay such Payments under this Installment Payment Contract as may lawfully be made from funds budgeted and appropriated for that purpose during Municipal Corporation's then current budget year. Should Municipal Corporation fail to budget, appropriate, or otherwise make available funds to pay Payments under a certain Schedule(s) following the then budget year the

applicable Schedule(s) shall be deemed terminated at the end of the then current budget year. Municipal Corporation agrees to deliver notice to Assignee of such termination at least ninety (90) days prior to the end of the then current budget year, but failure to give such notice shall not extend the term beyond such budget year year-end.

Municipal Corporation shall pay Assignee a charge on any Payment not paid on the date such payment is due at the rate of twelve percent (12%) per annum or the maximum amount permitted by law, whichever is less, from such date. A portion of each Payment is paid as, and represents payment of, interest, as set forth on each Schedule A-1.

Contractor shall order the Equipment, cause the Equipment to be delivered and installed at the location specified in the Agreement and pay any and all delivery and installation costs in connection therewith. When the Equipment has been delivered and installed to Municipal Corporation's satisfaction, Municipal Corporation shall evidence acceptance of the Equipment in accordance with the Agreement.

Municipal Corporation or Contractor shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment, as set forth in the Agreement. In addition, Municipal Corporation agrees to comply in all respect with all applicable laws, regulations, and rulings of any legislative, executive, administrative, or judicial body; provided that Municipal Corporation may contest in good faith the validity or application of any such law, regulation, or ruling in any reasonable manner that does not, in the opinion of Assignee, adversely affect the interest of Assignee under this Installment Payment Contract. Assignee shall have no responsibility to maintain, repair, or make improvements or additions to the Equipment.

ASSIGNEE MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY, OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE EQUIPMENT, OR WARRANTY WITH RESPECT THERETO AND IN NO EVENT SHALL ASSIGNEE BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS INSTALLMENT PAYMENT CONTRACT OR THE EXISTENCE, FURNISHING, FUNCTIONING, OR MUNICIPAL CORPORATION'S USE OF ANY ITEM, PRODUCT, OR SERVICE PROVIDED FOR THIS INSTALLMENT PAYMENT CONTRACT.

Assignee's right, title, and interest in, to and under this Installment Payment Contract or under any and all the Schedules may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Assignee and, to the extent of its interest, by any registered Owner of any lease participation certificates, without the necessity of obtaining the consent of Municipal Corporation; provided that (a) any

assignment, other than an assignment to or by a Registered Owner, shall not be effective until Municipal Corporation has received written notice, signed by the Assignor, of the name and address of the Assignee, and (b) any assignment to or by a registered Owner shall not be effective until it is registered on the registration books kept by the agent for Municipal Corporation. Municipal Corporation shall retain all such notices as a register of all Assignees (other than registered owners) and shall make all payments to the Assignee or Assignees designated in such register or, in the case of registered Owners to the agent. Participation certificates may be executed and delivered by the agent to Registered Owners, if any. Municipal Corporation agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements that may be reasonably requested by Assignee or any assignee to protect its interests in the Equipment and in this Installment Payment Contract. Municipal Corporation shall not have the right to and shall not assert against any Assignee or Registered Owner any claim, counterclaim, or other right Municipal Corporation may have against Assignee or Contractor. Municipal Corporation hereby agrees that Assignee may, without notice to Municipal Corporation, sell, dispose, or assign this Installment Payment Contract or any particular Schedule or Schedules to this Installment Payment Contract through a certificate of participation program, pool, trust, limited partnership, or other similar entity, whereby one or more interests are created in this Installment Payment Contract, or in the Equipment listed in or the Payments under a particular Schedule or Schedules to this Installment Payment Contract.

None of Municipal Corporation's right, title, and interest in, to, and under this Installment Payment Contract or under any of the Schedules hereto may be assigned or encumbered by Municipal Corporation for any reason, except if Municipal Corporation obtains the prior written consent of Assignee and an opinion of nationally recognized counsel in the area of tax exempt obligations satisfactory to Assignee that such assignment will not adversely affect the exclusion of the interest components of the Payments from gross income for federal income tax purposes. Any such assignment shall be subject to this Installment Payment Contract and the rights of the Assignee in, to, and under this Installment Payment Contract and the Equipment.

To secure all obligations of Municipal Corporation hereunder, Municipal Corporation hereby grants a security interest in and to all of the Municipal Corporation's right, title, and interest in and to the ECM's including substitutions and replacements thereof or thereto, and all proceeds (cash and non-cash), including the proceeds of insurance. Municipal Corporation agrees to provide such identification markings on the ECM's, in the form satisfactory to Assignee, or Assignee deems necessary or appropriate to give notice of Assignee's security interest in the ECM's. In the case of escrow funded transactions, as further security Municipal Corporation hereby grants to Assignee, a first priority security interest in the cash and negotiable instruments

from time to time comprising the Escrow Fund (as such term is defined in that certain Escrow Agreement and all proceeds (cash or non-cash) thereof. Municipal Corporation further agrees that with respect to the ECM's and if applicable, the Escrow Fund, Assignee shall have all of the rights and remedies of a secure party under the Uniform Commercial code as in effect in this State.

Municipal Corporation shall not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, security interest, encumbrance, or claim on or with respect to the ECM's or any interest therein, without prior written consent of Assignee, which consent shall not be reasonably withheld.

Subject to appropriation, any of the following events shall constitute an "Event of Default" under this Installment Payment Contract:

(a) Failure by Municipal Corporation to pay any Payment or other payment required to be paid hereunder at the time specified herein;

(b) Failure by Municipal Corporation to observe and perform any covenant, condition, or agreement on its part to be observed or performed, other than as referred to in subparagraph (a) above, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to Municipal Corporation by Assignee, unless Assignee shall agree in writing to an extension of such time prior to its expiration; provided that, if the failure stated in the notice cannot be corrected within the applicable period, Assignee will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Municipal Corporation within the applicable period and diligently pursued until the default is corrected;

(c) Any representation or warranty made by Municipal Corporation in this Installment Payment Contract, or any other document entered into in connection therewith and assigned to Assignee, shall prove to have been false, incorrect, misleading, or breached in any material respect on the date when made;

(d) Municipal Corporation shall (i) apply for or consent to the appointment of a receiver, trustee, custodian, or liquidator of Municipal Corporation, or of all or a substantial part of the assets of Municipal Corporation, (ii) be unable, fail, or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization, or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Municipal Corporation in any bankruptcy, reorganization or insolvency proceeding; or

(e) An order, judgment, or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian, or liquidator of Municipal Corporation of all or a substantial

part of the assets of Municipal Corporation, in each case without its application, approval, or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of thirty (30) consecutive days.

Whenever any Event of Default exists, Assignee shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

(a) By written notice to Municipal Corporation, Assignee may declare all Payments due pursuant to the applicable Schedule(s) and other amounts payable pursuant to the applicable Schedule(s) by Municipal Corporation hereunder to the end of the then current budget year to be due; and

(b) Assignee may take whatever action at law or in equity may appear necessary or desirable to enforce its rights as the owner of the Equipment under the applicable Schedule(s).

No remedy herein conferred upon or reserved to Assignee is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Installment Payment Contract now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof; but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Assignee to exercise any remedy reserved to it herein it shall not be necessary to give any notice other than such notice as may be required herein.

All notices, certificates, or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties hereto at the address as either party hereto shall designate in writing to the other for notices to such party, or to any assignee at its address as it appears on the registration books maintained by Municipal Corporation or the Agent.

To the extent permitted by law, Municipal Corporation shall indemnify, protect, hold harmless, save, and keep harmless Assignee from and against any and all liability, obligation, loss, claim, tax, and damage whatsoever, regardless of cause thereof, and all expenses in connection therewith (including without limitation counsel fees and expenses and any federal income tax and interest and penalties connected therewith imposed on interest received) arising out of or as the result of (a) the ownership of any item of the Equipment, (b) the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage, or return of any item of the Equipment, (c) any accident in connection with the operation, use, condition, possession, storage, or return of any item of the Equipment resulting in damage to property or injury to or death to any person, and/or (d) the breach of any covenant herein or any material misrepresentation contained herein. The

indemnification arising under this section shall continue in full force and effect notwithstanding the full payment of all obligations hereunder.

This Installment Payment Contract shall inure to the benefit of and shall be binding upon Assignee and Municipal Corporation and their respective successors and assigns. In the event any provision of this Installment Payment Contract shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

This Installment Payment Contract may be amended by Assignee and Municipal Corporation. This Installment Payment Contract shall be governed by and construed in accordance with the laws of the State of Indiana.

IN WITNESS WHEREOF, the Municipal Corporation has caused this Installment Payment Contract to be duly executed and attested by its duly authorized officers or representatives, and the parties hereto have set their hands and seals in duplicate on this 24th day of July 2003.

CITY OF BLOOMINGTON

By _____
John Fernandez

Its _____
Mayor

ENERGY SYSTEMS GROUP, LLC

By _____
James L. Adams

Its _____
President

ATTEST:

By _____
Regina Moore

Its _____
City Clerk

SCHEDULE A-1

AMORTIZATION SCHEDULE

Interest rate: 3.90%

Payment Number	Payment Date	Principal Component	Interest Component	Total Payment	Optional Prepayment Amount
1	4/15/2004	78,633.22	66,935.91	145,569.13	*
2	10/15/2004	100,858.36	44,710.77	145,569.13	*
3	4/15/2005	102,825.10	42,744.03	145,569.13	*
4	10/15/2005	104,830.19	40,738.94	145,569.13	*
5	4/15/2006	106,874.38	38,694.75	145,569.13	1,915,021.19
6	10/15/2006	108,958.43	36,610.70	145,569.13	1,803,883.59
7	4/15/2007	111,083.12	34,486.01	145,569.13	1,690,578.80
8	10/15/2007	113,249.24	32,319.89	145,569.13	1,575,064.58
9	4/15/2008	115,457.60	30,111.53	145,569.13	1,457,297.83
10	10/15/2008	117,709.02	27,860.11	145,569.13	1,337,234.63
11	4/15/2009	120,004.35	25,564.78	145,569.13	1,214,830.19
12	10/15/2009	122,344.44	23,224.69	145,569.13	1,090,038.86
13	4/15/2010	124,730.15	20,838.98	145,569.13	962,814.11
14	10/15/2010	127,162.39	18,406.74	145,569.13	833,108.47
15	4/15/2011	129,642.06	15,927.07	145,569.13	700,873.57
16	10/15/2011	132,170.08	13,399.05	145,569.13	566,060.09
17	4/15/2012	134,747.39	10,821.74	145,569.13	428,617.75
18	10/15/2012	137,374.97	8,194.16	145,569.13	288,495.28
19	4/15/2013	140,053.78	5,515.35	145,569.13	145,640.42
20	10/15/2013	142,784.73	2,784.40	145,569.13	0.00
Totals		\$2,371,493.00	\$539,889.60	\$2,911,382.60	

The Optional Prepayment Amount can be paid after the Loan Payment due on the same date has been paid.

* Please call for the Optional Prepayment Amount during the first two years.

EXHIBIT B

ESCROW AGREEMENT

This Escrow Agreement ("Agreement") made and entered into this 24th day of July 2003, among, Fifth Third Bank, a State Banking Corporation, duly organized and existing under the laws of the State of Ohio (the "Escrow Agent") whose office is at 38 Fountain Square Plaza, Mail Drop 10905A, Cincinnati, Ohio, 45263; Energy Systems Group, LLC, with offices at 101 Plaza East Boulevard, Suite 320, Evansville, Indiana (the "Contractor"); and City of Bloomington, Indiana, a municipal corporation existing under the laws of the State of Indiana (the "Municipal Corporation").

RECITALS

- A. Contractor and Municipal Corporation have entered into a Guaranteed Energy Savings Performance Contract dated as of July 24, 2003 (the "Agreement") pursuant to which Contractor will design, sell, and install ECM's to Municipal Corporation;
- B. Contractor and Municipal Corporation desire that the Escrow Agent undertake the responsibility of disbursing funds to the Contractor, and Escrow Agent desires to undertake that function, all in accordance with this Escrow Agreement;

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties hereto hereby agree as follows:

1. DEFINITIONS

Assignee means the company, to whom the Contractor has assigned its rights to all future payments under the Installment Payment Contract.

Authorized Representative means the person designated by the governing body of the Municipal Corporation to act as the Authorized Representative under the Agreement and this Escrow Agreement. In the absence of a designation, Authorized Representative shall be the Mayor or his/her designee.

Closing Date means the day agreed upon by Contractor and Municipal Corporation when Contractor causes to be deposited with the Escrow Agent the moneys required to be deposited pursuant to Section 3 hereof.

Escrow Agent means the escrow agent referred to in the title hereof or any successor thereto acting as Escrow Agent pursuant to this Escrow Agreement.

Escrow Agreement means this Escrow Agreement and any duly authorized and executed amendment hereto.

Project Fund means the fund established pursuant to Section 3 of this Escrow Agreement.

All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement.

2. APPOINTMENT OF ESCROW AGENT

Contractor and Municipal Corporation hereby appoint the Escrow Agent to receive, hold, invest, and disburse money delivered to it in accordance with this Escrow Agreement, and to take such other actions not inconsistent herewith as shall be necessary to accomplish the purposes of this Escrow Agreement. The Escrow Agent hereby accepts such appointment and undertakes to perform such rights and power as are exclusively and specifically set forth in this Agreement. Escrow Agent shall exercise such of the rights and powers vested in it by this Escrow Agreement and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

3. PROJECT FUND

- A. The Escrow Agent shall establish the Project Fund, which shall be administered and applied by the Escrow Agent in accordance with this Escrow Agreement. The Escrow Agent shall keep this fund separate from all other funds and moneys held by it.
- B. Within thirty (30) days after closing, the Contractor or Contractor's Assignee shall deliver or cause to be delivered to the Escrow Agent an amount equal to \$2,371,493. The Escrow Agent shall deposit this money into the Project Fund.
- C. The Escrow Agent shall pay Project Costs from the Project Fund within two (2) Business Days of receipt of direction from the Authorized Representative in the form of Schedule B-1 that payment should be made. Escrow Agent will pay the Project Costs directly to Contractor as directed. In no event shall Escrow Agent be obligated to disburse funds

pursuant to this Section 3 more than once per calendar month. Escrow Agent may conclusively rely upon information in the direction of the Authorized Representative.

D. The following provisions shall apply to payment of the Contract Price (as defined in the Agreement):

- a) Applications for Payment. Payment of the Contract Price shall be made in monthly installments based upon the Contractor's progress in completing the installation of the ECM's (as defined in Section 2 of the Agreement), except that Contractor shall be paid in advance in respect to the Contract Price in the amount of 20% of the Contract Price as the first payment, the request for which shall be submitted to the Escrow Agent upon the execution and delivery of this Agreement. The Municipal Corporation and the Contractor agree to submit to the Escrow Agent a requisition, in the form of Schedule B-1 (herein the "Payment Requisition"), for the payment of such sum from the Project Fund. With respect to progress payments, the Contractor shall submit to the Authorized Representative by the first day of each month a Payment Requisition as an application for payment.

Not later than ten (10) days following the Contractor's submission of a Payment Requisition, the Authorized Representative shall advise the Contractor whether or not the Municipal Corporation agrees that the Contractor is entitled to payment of the amount requested. If the Municipal Corporation agrees that the amount requested is due and payable, the Municipal Corporation and the Designee (which shall be defined as the person designated by the Contractor to have the authority to act for and bind the Contractor with respect to this Project) shall submit to the Escrow Agent a Payment Requisition, and the amount requested shall be paid to the Contractor from the Project Fund.

In the event that the Authorized Representative shall advise the Contractor that the Municipal Corporation does not concur in the amount requested for payment, the Authorized Representative and the Designee shall meet as soon as practicable in an effort to resolve such disagreement. If the Authorized Representative and the Designee are not able to agree upon the

amount properly payable to the Contractor within seven (7) days following the Municipal Corporation's denial of the request for payment, then the Municipal Corporation and the Contractor shall submit to the Escrow Agent a Payment Requisition for payment in an amount equal to seventy-five percent (75%) of the amount of the payment request in dispute. Such sum shall be payable by the Escrow Agent from the Project Fund.

- b) Withholding of Payments. Municipal Corporation may decline to endorse a Payment Requisition if (i) the Project has not progressed according to the construction schedule due to the fault of Contractor; (ii) the quality of the work does not conform to the requirements of the Contract Documents; or (iii) the withholding of such payment(s) is necessary to protect Municipal Corporation from loss because of (a) third party claims filed due to Contractor's failure to make payments for labor, materials, or equipment, (b) costs, fines, or penalties incurred by Municipal Corporation due to Contractor's failure to comply with this Agreement, or (c) reasonable belief by Municipal Corporation that the Project will not be completed by the completion date due to the fault of Contractor.

If Municipal Corporation declines to endorse a Payment Requisition for any of the foregoing reasons, it shall notify Contractor in writing of the reasons therefore and subject to the provisions of Section 8 of the Agreement, shall allow Contractor thirty (30) days to cure such defects, including the cost of repairing or replacing any portion of the Project damaged or destroyed by Contractor when correcting such problem(s).

If Contractor fails to correct such problem(s) within the period of time stated in the above notice, and such failure is due to the fault of Contractor and not attributable to an event of force majeure or unreasonable interference by other contractors performing work in connection with the Facilities (as defined in the Agreement), then, without prejudice to any other remedies it may have, Municipal Corporation shall have the right to correct any such problem(s) and order Contractor to stop the Project. In such event, Contractor shall be responsible for all costs incurred by Municipal Corporation in correcting each such problem(s) and

Municipal Corporation shall have the right to deduct all such costs from any payments then or thereafter due Contractor. If such costs exceed the balance of the payments then or thereafter due Contractor, Contractor shall promptly pay such excess to Municipal Corporation after receipt of an invoice from Municipal Corporation detailing such costs.

c) Final Payment. Any sums due and owing in respect of the Contract Price shall be payable to the Contractor within ten (10) calendar days after the date Municipal Corporation gives written notice of its Final Acceptance of a particular Facility, or the entire Project, as the case may be. The Municipal Corporation and the Contractor shall endorse a final form of Payment Requisition directing the Escrow Agent to make such payment from the Project Fund (such payment herein referred to as the "Final Payment"). Such final form of Payment Requisition shall be accompanied by the Municipal Corporation's completion certificate. Acceptance of the Final Payment by Contractor shall constitute a waiver of all claims by Contractor for any further payment of the Contract Price or any other sum in respect of the Project.

E. Notwithstanding anything to the contrary herein, Escrow Agent will not pay a Project Cost if such payment, when added to the sum total of all Project Costs theretofore paid by Escrow Agent, would cause the total amount of the Project Costs to exceed the moneys then held by the Escrow Agent in the Project Fund.

F. The Project Fund will terminate and any funds remaining therein including interest earnings will be paid to Energy Systems Group, LLC or Assignee upon occurrence of any one of the following events:

a) Escrow Agent has received notice from Contractor or Contractor's Assignee that the Municipal Corporation is in default hereunder or under the Agreement; or

b) Escrow Agent receives notice from Contractor or Municipal Corporation that the Agreement has been terminated.

G. The Project Fund will terminate and any funds remaining therein (including interest earnings therein) will be paid to Energy Systems Group, LLC once the Escrow Agent has received written notice from Municipal Corporation that the Final Acceptance Certificate has been executed by Municipal Corporation.

4. ADMINISTRATION AND INVESTMENT OF THE PROJECT FUND

A. Money held by the Escrow Agent in the Project Fund may only be held in demand deposits or invested in Qualified Investments as described in Section 4(b) hereof. The Authorized Representative may, in writing (or orally immediately confirmed in writing), direct the Escrow Agent in which of the Qualified Investments to invest, but in the absence of such order the Escrow Agent shall invest in any of the Qualified Investments described in Section 4(b), provided, however, that the funds will be available within one (1) business day to pay required transfers or payments when due. The Escrow Agent will sell Qualified Investments upon the written instructions (or oral instructions immediately confirmed in writing) of Municipal Corporation, and Escrow Agent may sell Qualified Investments if necessary to meet any required payment or transfer. Qualified Investments shall be registered in the name of the Escrow Agent or its agent. The Escrow Agent may buy Qualified Investments from itself or its affiliates or sell Qualified Investments to itself or its affiliates consistent with its fiduciary duties hereunder.

B. Qualified Investments means: (i) direct general obligations of the United States; (ii) obligations guaranteed by the United States; (iii) general obligations of the agencies and instrumentalities of the United States; (iv) repurchase agreements which are collateralized by obligations listed in clause (i), (ii) or (iii) above; or (v) certificates of deposit or time or demand deposits issued by a domestic bank with assets in excess of \$50,000,000.00; or (vi) money market accounts investing in (i), (ii), (iii) or (iv) above;

(vii) Guaranteed Investment Agreements from providers who are rated AAA by S&P or Moody's.

- C. Any income received on the investment of money shall be deposited in the Project Fund. Any profit or loss on the disposition of Qualified Investments shall be credited or charged to the Project Fund. Escrow Agent shall not be responsible for losses on any investments made in accordance with this Escrow Agreement.
- D. Municipal Corporation shall take no action under this Escrow Agreement or otherwise which would cause payments under the Agreement to constitute arbitrage bonds within the meaning of Section 148 of the Internal Revenue Code of 1986 and regulations promulgated thereunder or otherwise take any action which would cause the interest on payments under the Agreement to be subject to Federal or state income tax.
- E. The moneys and investments in the Project Fund are held in trust for the benefit of Contractor, Contractor's Assignee, and Municipal Corporation for the purpose specified herein and shall not be subject to the lien or attachment of the creditors of Contractor or Municipal Corporation.

5. ESCROW AGENT COMPENSATION, REMOVAL REGISTRATION, RELIANCE ON, CONTRACTOR CERTIFICATES AND REPRESENTATIONS

- A. Energy Systems Group, LLC shall pay fees of the Escrow Agent for its services hereunder. Fees shall be paid from interest earnings in the Project Fund.
- B. Upon thirty (30) days prior written notice to Escrow Agent, Contractor, Contractor's Assignee, and Municipal Corporation may remove the Escrow Agent at any time and for any reason provided that Contractor, Contractor's Assignee, and Municipal Corporation agree in writing to remove the Escrow Agent and to appoint a new Escrow Agent which accepts such appointment and which shall be a bank or trust company which has a combined capital and surplus of \$50,000,000.00.

- C. The Escrow Agent may at any time resign by giving sixty (60) days prior written notice to Contractor, Contractor's Assignee, and Municipal Corporation of its resignation. In the event of resignation, Contractor and Contractor's Assignee may appoint a successor Escrow Agent meeting the requirements of Section 5(b) hereof, but if Contractor and Contractor's Assignee has failed to do so within thirty (30) days of Escrow Agent's notice of resignation, Municipal Corporation shall do so before the resignation becomes effective.
- D. Any corporation into which the Escrow Agent may be merged or converted, or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which it shall be a party, or any corporation to which the Escrow Agent may sell or transfer all or substantially all of its corporate trust business (provided that such Corporation shall meet the requirements of Section 5(b) hereof) shall be the successor to the Escrow Agent without the execution or filing of any paper or further act.
- E. The Escrow Agent shall be protected and shall incur no liability for acting upon any resolution, notice, telegram, request, consent, waiver, certificate, statement, affidavit, voucher, bond, requisition, or other paper which it shall in good faith believe to be genuine, and to have been passed or signed by the proper board or person, or to have been prepared and furnished pursuant to any of the provisions of this Escrow Agreement. The Escrow Agent shall be under no duty to make any investigation or inquiry as to any statement contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements. Whenever in the administration of its duties under this Agreement, the Escrow Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) hereof shall be deemed to be conclusively proved and established by the certificate of Municipal Corporation or Contractor and Contractor's Assignee. The recitals, statements, and representations by the Municipal Corporation and Contractor contained in this Escrow Agreement are not made by the Escrow Agent

and the Escrow Agent does not assume, and shall not have, any responsibility or obligation for the correctness of any thereof.

6. ASSIGNMENT

Municipal Corporation shall not assign its rights or duties hereunder without the express written consent of the other parties hereto. The Escrow Agent shall not assign its rights or duties hereunder except as provided in Section 5 (d) hereof. Contractor or Contractor's Assignee may assign its rights and duties hereunder without any consent of the other parties hereto.

7. LIMITATION OF LIABILITY

- A. Neither Contractor or Contractor's Assignee shall be liable to Municipal Corporation, and Municipal Corporation shall not be liable to Contractor or Contractor's Assignee, with respect to any performance or failure of performance by the Escrow Agent of its duties hereunder.
- B. Nothing in this Escrow Agreement, expressed or implied, is intended or shall be construed to give any person other than Municipal Corporation, Contractor, Contractor's Assignee, and the Escrow Agent any legal or equitable right, remedy or claim under or in respect of this Escrow Agreement or any covenant, condition, or provision hereof; and all such covenants and provisions are and shall be for the sole and exclusive benefit of Municipal Corporation, Contractor, Contractor's Assignee, and the Escrow Agent.

8. MISCELLANEOUS

- A. The Escrow Agent shall keep complete and accurate records of all moneys received and disbursed under this Escrow Agreement, which shall be available for inspection by Municipal Corporation, Contractor, Contractor's Assignee, or the agent of either of them, at reasonable times during regular business hours.
- B. Notices under this Agreement shall be deemed given if personally delivered, sent by commercial overnight delivery service, or sent by certified mail, postage prepaid, and if

to Municipal Corporation or Contractor addressed to it at the address provided in the Agreement and if to the Escrow Agent addressed to it at its office set forth in the title to this Escrow Agreement.

- C. Each of the parties hereby represents and warrants that it has full legal authority and is duly empowered to enter into and perform this Escrow Agreement and has taken all necessary action to authorize the execution of this Escrow Agreement by the persons signing it.
- D. This Escrow Agreement shall be construed and governed in accordance with the laws of the State of Indiana.
- E. Any provision of this Escrow Agreement found to be prohibited by law shall be ineffective only to the extent of such prohibition, and shall not invalidate the remainder of this Escrow Agreement.
- F. This Escrow Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Whenever in this Escrow Agreement any party hereto is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all covenants and agreements contained in this Agreement by or on behalf of any party hereto shall bind and inure to the benefit of the successors and assigns thereof whether so expressed or not.
- G. This Escrow Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.
- H. The headings or titles of the Articles shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Escrow Agreement.
- I. Escrow Agent's duties and obligations are exclusively as set forth herein, and Escrow Agent shall not be deemed to have knowledge of any other agreement.

J. In the event the Escrow Agent receives notices from both Contractor and Municipal Corporation that are in conflict with one another, Escrow Agent shall comply with the notice received from the Municipal Corporation.

CITY OF BLOOMINGTON

By _____
John Fernandez

Its _____
Mayor

ENERGY SYSTEMS GROUP, LLC

By _____
James L. Adams

Its _____
President

FIFTH THIRD BANK

By _____

Its _____

ATTEST:

By _____
Regina Moore

Its _____
City Clerk

SCHEDULE B-1

PAYMENT REQUISITION

July 24, 2003

Fifth Third Bank
38 Fountain Square Plaza
Mail Drop 10905A
Cincinnati, Ohio, 45263

Re: Direction to Make Disbursements from the Escrow Account Project Fund

Ladies and Gentlemen:

Pursuant to the Escrow Agreement dated July 24, 2003 between Energy Systems Group, LLC, the Municipal Corporation, and Fifth Third Bank, and the Installment Payment Contract dated as of July 24, 2003 between the Contractor and the Municipal Corporation, you are hereby directed to disburse from the Project Fund the amount indicated below.

As required by the Contract, the undersigned hereby certifies:

1. This is requisition number 1 from the Project Fund.
2. The name and address of the person, firm or corporation to whom the disbursement is due is as follows:

Energy Systems Group, LLC
101 Plaza East Blvd., Suite 320
Evansville, IN 47715
3. The amount to be disbursed is \$2,371,493.
4. The disbursement herein requested is for an obligation properly incurred and is a proper charge against the Project Fund as a Cost of Installation, and such obligation has not been the basis of any previous disbursement.

Approved for:

ENERGY SYSTEMS GROUP, LLC

CITY OF BLOOMINGTON

By _____
James L. Adams, President

By _____
John Fernandez, Mayor

Date July 24, 2003

Date July 24, 2003

SCHEDULE B-2

ANTICIPATED PAYMENT SCHEDULE

Start Date	Amount
August 1, 2003	20%
September 1, 2003	10%
October 1, 2003	15%
November 3, 2003	15%
December 1, 2003	15%
January 5, 2004	10%
February 2, 2004	5%
Job Final	10%

EXHIBIT C

CERTIFICATE OF RESOLUTIONS

I, Regina Moore, do hereby certify that I am the duly elected or appointed and acting City Clerk of the City of Bloomington, Indiana, a political subdivision or agency duly organized and existing under the laws of the State of Indiana (the "Governmental Unit") and that the following resolutions have been presented to and duly adopted by the Governmental Unit at a meeting duly and regularly held and convened in accordance with applicable law on July 24, 2003, and that said resolutions have not been modified or rescinded in whole or in part and are in full force and effect on the date hereof;

WHEREAS, the Governmental Unit advertised for and received proposals for certain energy conservation measures;

WHEREAS, the Governmental Unit desires to accept the proposal of Energy Systems Group, LLC (the "Contractor");

WHEREAS, the Contractor has submitted a proposed form of agreement entitled Guaranteed Energy Savings Performance Contract (the "Agreement").

NOW, THEREFORE, be it RESOLVED that the Agreement be, and is hereby, approved.

BE IT FURTHER RESOLVED, that any official of the Governmental Unit be, and is hereby, authorized, empowered, and directed to sign on its behalf the Agreement and any addenda, schedules, notes, or other instruments issued under the provisions of the Agreement and any other instrument or document which may be necessary or expedient in connection and agreement upon fulfillment of the provisions of the Agreement.

IN WITNESS WHEREOF, I have hereunto subscribed my name as Secretary and affixed the seal of the Governmental Unit this 24th day of July 2003.

Regina Moore, City Clerk

July 24, 2003

(Seal)

EXHIBIT D

OPINION OF MUNICIPAL CORPORATION'S COUNSEL (TO BE TYPED ON COUNSEL'S LETTERHEAD)

Energy Systems Group, LLC
And It's Assignee
101 Plaza East Boulevard, Suite 320
Evansville, Indiana 47715

Ladies and Gentlemen:

I am counsel for City of Bloomington, Indiana ("Municipal Corporation"). In order to render this opinion I have reviewed the Guaranteed Energy Savings Performance Contract (the "Agreement"), dated as of July 24, 2003, between the Municipal Corporation and Energy Systems Group, LLC ("Contractor"), and other documents and instruments related to the Agreement or otherwise necessary to render this opinion, as well as all proceedings taken by the Municipal Corporation in connection with the Agreement. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement. Based upon the foregoing it is my opinion that:

1. The Municipal Corporation is a duly organized and validly existing political subdivision of the State of Indiana and is a political subdivision within the meaning of Section 103 of the Internal Revenue Code and related regulations and rulings.
2. Municipal Corporation has the power and authority to execute and perform the Agreement and to purchase ECM's from the Contractor thereunder.
3. The Agreement and related instruments and documents:
 - (a) Have been duly authorized by appropriate resolutions;
 - (b) Do not contravene and will not violate or result in a default under any charter, certificate of incorporation, by-laws, indenture, or any other agreement or instrument by which Municipal Corporation or its property is bound or to which Municipal Corporation is a party;
 - (c) The Agreement and the Installment Payment Contract have been duly executed by the duly authorized officers of the Municipal Corporation, and do and will constitute the legal, valid, and binding obligations of the Municipal Corporation enforceable against the Municipal Corporation in accordance with their respective terms.
4. No approval or consent is required from any governmental authority with respect to the entering into or performance by the Municipal Corporation of the Agreement and the transactions contemplated thereby or if any such approval is required it has been duly obtained.

5. No litigation or other proceedings are pending or to the best of my knowledge, threatened against the Municipal Corporation which would adversely affect the Municipal Corporation's legal title to the ECM's or, if decided adversely to the Municipal Corporation, would materially affect its financial condition.

This opinion is for the benefit of the addressee and any Assignee, and you and such Assignee and any counsel engaged by you or such Assignee shall be entitled to rely hereupon, including such counsel's reliance hereupon in giving its opinion addressed to other persons.

Very truly yours,

EXHIBIT E

ARBITRAGE CERTIFICATE

I, John Fernandez, hereby certify that I am duly qualified and acting Mayor of the City of Bloomington, Indiana, a municipal corporation, existing under the laws of the State of Indiana (the "Municipal Corporation"), and that in my official capacity as such officer, I duly executed a Guaranteed Energy Savings Contract dated as of July 24, 2003, (the "Agreement"), by and between Municipal Corporation and Energy Systems Group, LLC (the "Contractor").

This certificate is being issued pursuant to Section 148 of the Internal Revenue Code of 1986, as amended to the date hereof (the "Code"), and the regulations promulgated thereunder (the "Regulations"). I am familiar with the following facts and expectations; all of which I believe are reasonable and to the best of my knowledge and belief, there are no other facts or circumstances that would suggest such information is not reasonable.

1. The Municipal Corporation expects the proceeds of the Agreement to be disbursed to pay the following expenses: Total Costs: \$2,371,493 to Energy Systems Group, LLC for the ECM's referred to in the Agreement.
2. If all proceeds are not expended within six (6) months, the Municipal Corporation will (i) qualify for the eighteen (18) month exception to the rebate provisions of Section 148 of the Code, (ii) qualify for the small governmental issuer exception to the rebate provisions, or (iii) rebate or cause to be rebated any excess investment earnings and shall retain all records with respect to the calculations of such rebate required under the "Rebate Compliance" provisions of Section 148(f) of the Code.
3. The original proceeds of the Agreement plus expected earnings do not exceed by more than five percent (5%) of the amount, which the Municipal Corporation reasonably expects to be needed for the governmental purposes for which the Agreement was executed.
4. Except as provided in the Escrow Agreement, no proceeds of the Agreement shall be deposited in a reserve fund, replacement fund or sinking fund.
5. The ECM's have not been and are not expected during the term of the Agreement to be sold or otherwise disposed of by the Municipal Corporation.

Dated: July 24, 2003

By _____
John Fernandez

Its _____
Mayor

EXHIBIT F

CERTIFICATE OF INCUMBENCY

I, Regina Moore, am the duly elected, qualified and acting City Clerk of the City of Bloomington, Indiana, a political subdivision, duly organized and existing under the laws of the State of Indiana (the "Governmental Unit"), and I do further certify that the persons are the duly elected (or appointed), qualified and acting officers of the Governmental Unit and hold on the date of this Certificate the offices set forth opposite their respective names, and that the signatures appearing opposite their respective names are the genuine signatures of such officers.

<u>NAME OF OFFICER</u>	<u>TITLE OF OFFICER</u>	<u>SIGNATURE OF OFFICER</u>
<u>John Fernandez</u>	<u>Mayor</u>	<u></u>
<u>Regina Moore</u>	<u>City Clerk</u>	<u></u>

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Governmental Unit this 24th day of July 2003.

(Seal)

Regina Moore , City Clerk

EXHIBIT G

UCC FINANCING STATEMENT

Cornelius printed products 317.251.8990



003894

EXHIBIT G

UNIFORM COMMERCIAL CODE
INSTRUCTIONS:STATE OF INDIANA
FINANCING STATEMENT

FORM UCC-1

1. This form may be used for filings with the Secretary of State and is also suitable for the following filings with the County Recorder: consumer goods, farm equipment and farm products pursuant to IC 26-1-9-401(1)(a) & (c).
2. Please type this form. Fold only along perforation for mailing.
3. Remove Secured Party and Debtor copies and send three copies with interleaved carbon paper to the filing officer. Enclose filing fee of \$4.00 plus an additional fee of \$1.00 for each of the following: (1) filing of an assignment on this form; and/or (11) each additional debtor's name over one. Form UCC-3 should be used for any subsequent assignments.
4. If the space provided for any item is inadequate, the item may be continued on additional sheets, preferable 5" x 8". An additional fee of \$4.00 is due for oversized sheets.
5. If the collateral is crops growing or to be grown, describe the collateral and also the real estate.
6. The filing officer will return the third page of this Form as an acknowledgment. Secured Party at a later time may use the third page as a Termination Statement by dating and signing the termination legend on that page.

FOLD HERE FOR MAILING

This Financing Statement is presented to Filing Officer for filing pursuant to the Uniform Commercial Code.		Number of additional sheets presented:
Debtor(s) (Last Name First) and Address(es)	Secured Party(ies) and Address(es)	FOR FILING OFFICER USE
City of Bloomington 401 North Morton Suite 250 Bloomington, Indiana 47402	Energy Systems Group LLC 101 Plaza East Blvd Suite 320 Evansville, Indiana 47715	
This Financing Statement covers the following types (or items) of property (include description of real estate when collateral is crops)		
See schedule attached hereto and made a part hereof. This financing statement covers property that will be located on real property described in schedule hereto. The record owner of the real property is Debtor.		
<input type="checkbox"/> Products of Collateral are also covered. (See IC 26-1-9-315)		

Filed with: <input type="checkbox"/> Secretary of State	<input type="checkbox"/> Recorder of _____ County
By: _____ Signature of Debtor (or Secured Party) John Fernandez, Mayor in cases covered by IC 26-1-9-402(2)	<input type="checkbox"/> Collateral was brought into this state subject to a security interest in another jurisdiction or the Debtor's location has been changed to this state. <input type="checkbox"/> Filed in accordance with a security agreement signed by the Debtor authorizing the Secured Party to file this statement.

FINANCING STATEMENT - State Form 36751(R)
Form UCC-1 Indiana Uniform Commercial Code

Prescribed By Secretary of State

(1) Filing Officer Copy Alphabetical

EXHIBIT H

IRS FORM 8038G

Form **8038**
(Rev. January 1999)
Department of the Treasury
Internal Revenue Service

**Information Return for Tax-Exempt
Private Activity Bond Issues**
(Under Internal Revenue Code section 149(e))
▶ See separate instructions.

OMB No. 1545-0720

Part I Reporting AuthorityIf Amended Return, check here ☐

1 Issuer's name City of Bloomington		2 Issuer's employer identification number 35 16000954	
3 Number and street (or P.O. box if mail is not delivered to street address) 401 North Morton Suite 250		Room/suite	4 Report number PA -
5 City, town, or post office, state, and ZIP code Bloomington, IN 47402		6 Date of issue	
7 Name of issue Guaranteed Energy Savings Project		8 CUSIP number	
9 Name and title of officer or legal representative whom the IRS may call for more information John Fernandez Mayor		10 Telephone number of officer or legal representative (812) 349-3406	

Part II Type of Issue (check applicable box(es) and enter the issue price for each)

Issue Price

11 Exempt facility bond:		
a <input type="checkbox"/> Airport (sections 142(a)(1) and 142(c))	11a	
b <input type="checkbox"/> Docks and wharves (sections 142(a)(2) and 142(c))	11b	
c <input type="checkbox"/> Water furnishing facilities (sections 142(a)(4) and 142(e))	11c	
d <input type="checkbox"/> Sewage facilities (section 142(a)(5))	11d	
e <input type="checkbox"/> Solid waste disposal facilities (section 142(a)(6))	11e	
f <input type="checkbox"/> Qualified residential rental projects (sections 142(a)(7) and 142(d)), as follows:	11f	
Meeting 20-50 test (section 142(d)(1)(A))		
Meeting 40-60 test (section 142(d)(1)(B))		
Meeting 25-60 test (NYC only) (section 142(d)(6))		
Has an election been made for deep rent skewing (section 142(d)(4)(B))? <input type="checkbox"/> Yes <input type="checkbox"/> No		
g <input type="checkbox"/> Facilities for the local furnishing of electric energy or gas (sections 142(a)(8) and 142(f))	11g	
h <input type="checkbox"/> Facilities allowed under a transitional rule of the Tax Reform Act of 1986 (see instructions)	11h	
Facility type		
1986 Act section		
i <input type="checkbox"/> Qualified enterprise zone facility bonds (section 1394) (see instructions)	11i	
j <input type="checkbox"/> Qualified "new" empowerment zone facility bonds (section 1394(f)) (see instructions)	11j	
k <input type="checkbox"/> District of Columbia Enterprise Zone facility bonds (section 1400A) (see instructions)	11k	
l <input type="checkbox"/> Other. Describe (see instructions) ▶	11l	
12 <input type="checkbox"/> Qualified mortgage bond (section 143(a))	12	
13 <input type="checkbox"/> Qualified veterans' mortgage bond (section 143(b))	13	
If you elect to rebate arbitrage profits to the United States, check box <input type="checkbox"/>		
14 <input type="checkbox"/> Qualified small issue bond (section 144(a)) (see instructions).	14	
For \$10 million small issue exemption, check box <input type="checkbox"/>		
15 <input type="checkbox"/> Qualified student loan bond (section 144(b))	15	
16 <input type="checkbox"/> Qualified redevelopment bond (section 144(c))	16	
17 <input type="checkbox"/> Qualified hospital bond (section 145(c)) (attach schedule—see instructions)	17	
18 <input type="checkbox"/> Qualified 501(c)(3) nonhospital bond (section 145(b)) (attach schedule—see instructions)	18	
Check box if 95% or more of net proceeds will be used only for capital expenditures ▶ <input type="checkbox"/>		
19 <input type="checkbox"/> Nongovernmental output property bond (treated as private activity bond) (section 141(d))	19	
20 <input checked="" type="checkbox"/> Other. Describe (see instructions) ▶ Guaranteed Energy Savings Project	20	\$2,371,493

Part III Description of Bonds (Complete for the entire issue for which this form is being filed.)

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21		\$ 2,371,493	\$ 2,371,493	10 years	3.90 %

For Paperwork Reduction Act Notice, see page 4 of the Instructions.

Cat. No. 49973K

Form **8038** (Rev. 1-99)

Part IV Uses of Proceeds of Issue (including underwriters' discount)		Amount
22	Proceeds used for accrued interest	22
23	Issue price of entire issue (enter amount from line 21, column (b))	23 \$2,371,493
24	Proceeds used for bond issuance costs (including underwriters' discount)	24
25	Proceeds used for credit enhancement	25
26	Proceeds allocated to reasonably required reserve or replacement fund	26
27	Proceeds used to currently refund prior issue (complete Part VI)	27
28	Proceeds used to advance refund prior issue (complete Part VI)	28
29	Total (add lines 24 through 28)	29
30	Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30 \$2,371,493

Part V Description of Property Financed by Nonrefunding Proceeds

Caution: The total of lines 31a through e below must equal line 30 above. Do not complete for qualified student loan bonds, qualified mortgage bonds, or qualified veterans' mortgage bonds.

31 Type of Property Financed by Nonrefunding Proceeds:		Amount
a	Land	31a
b	Buildings and structures	31b
c	Equipment with recovery period of more than 5 years	31c
d	Equipment with recovery period of 5 years or less	31d
e	Other (describe)	31e

32 North American Industry Classification System (NAICS) of the projects financed by nonrefunding proceeds.			
	NAICS Code	Amount of nonrefunding proceeds	
a		\$	c
b		\$	d

Part VI Description of Refunded Bonds (Complete this part only for refunding bonds.)

33	Enter the remaining weighted average maturity of the bonds to be currently refunded	years
34	Enter the remaining weighted average maturity of the bonds to be advance refunded	years
35	Enter the last date on which the refunded bonds will be called	
36	Enter the date(s) the refunded bonds were issued ▶	

Part VII Miscellaneous

37	Name of governmental unit(s) approving issue (see instructions) ▶	
38	Check box if you have designated any issue under section 265(b)(3)(B)(i)(III)	<input checked="" type="checkbox"/>
39	Check box if you have elected to pay a penalty in lieu of arbitrage rebate	<input type="checkbox"/>
40	Check box if you have identified a hedge (see instructions)	<input type="checkbox"/>

Part VIII Volume Caps		Amount
41	Amount of state volume cap allocated to the issuer. Attach copy of state certification	41
42	Amount of issue subject to the unified state volume cap	42
43	Amount of issue not subject to the unified state volume cap or other volume limitations:	43
a	Of bonds for governmentally owned solid waste facilities, airports, docks, wharves, environmental enhancements of hydroelectric generating facilities, or high-speed intercity rail facilities	43a
b	Under a carryforward election. Attach a copy of Form 8328 to this return	43b
c	Under transitional rules of the Tax Reform Act of 1986 (enter Act section no.) ▶	43c
d	Under the exception for current refunding (section 146(i) and section 1313(a) of the Tax Reform Act of 1986)	43d
44a	Amount of issue of qualified veterans' mortgage bonds	44a
b	Enter the state limit on qualified veterans' mortgage bonds	44b
45a	Amount of section 1394(f) volume cap allocated to issuer. Attach copy of local government certification	45a
b	Name of empowerment zone ▶	

Under penalties of perjury, I declare that I have examined this return, and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

Please Sign Here

Signature of officer

John Fernandez

Name of above officer (type or print)

July 24, 2003

Date

Mayor

Title of officer (type or print)



EXHIBIT I

SCOPE OF WORK

In general, the scope of work includes:

- Engineered, as-built drawings of finished work
- All equipment, parts, material and labor to accomplish the work described below
- Required permits
- Project Management and coordination
- Regularly scheduled project meetings
- Equipment check, test and start-up
- Training on all new equipment
- Operations and maintenance manuals for new equipment and systems

General exclusion for the following items:

- Basin draining and cleaning
- Asbestos abatement

1.0 Exterior Lighting

- 1.1 Clarifier/Aeration Basin – Install twelve new twelve-foot tall poles with 250-watt metal halide lamps. Replace fourteen wall packs with TWH 250-watt wall packs.
- 1.2 Road Lighting – Replace twenty-two mercury vapor fixtures with shoebox style 250-watt metal halide heads. Existing poles will be reused, except for four of the poles that are damaged and will be replaced.
- 1.3 Pump Building – Replace three canopy lights with 175-watt metal halide. Replace four wall packs with TWH 250-watt wall packs.
- 1.4 Chlorine Building – Replace four canopy lights. Replace six wall packs with TWH 250-watt wall packs.
- 1.5 Maintenance Building – Replace seven wall packs with TWH 250-watt wall packs. Clean the three canopy lenses.

All fixtures are Lithonia or equivalent. Mercury vapor lighting around drying fields are excluded from this scope of work. All existing ballasts that are removed and those that contain PCB's will be disposed of per IDEM requirements.

2.0 HVAC

Remove the heating and ventilating units from the east clarifier basin the ceiling mounted unit in the bar screen room of the pump building. Replace each unit with gas-fired unit.

- Demo (2) heating and ventilating units, east clarifier basin and bar screen room of the pump building.
- Demo (1) electric duct heater in the east clarifier basin
- Provide and Install (2) gas fired heating and ventilating units in place of the existing, including curb adapters
- Modify and repair duct
- Provide and install gas piping from existing service to each location
- Provide and install (2) thermostat temperature control, (1) for each unit.
- Check, test and start-up of each unit

Table 1: Electric Heating & Ventilating Units

ID	Building	Existing Fan	Scfm	Heating Capacity (Btuh)
B-AHU-1	Clarifier Basin	Trane PCC 21 (Serial #B78M03227)	12,000	650,000
P-AHU1	Pump – Bar Screen Room	N/A	1,500	80,000

Work to other heating units is excluded.

3.0 Fine Bubble Aeration

3.1 Aeration tank modifications

- Demo existing coarse bubble aerators and piping in (4) aeration basins
- Install 9" fine bubble diffusers (approx. 8500). System based on 20 MGD flow, 150 ppm BOD, and 15-ppm ammonia.
- Provide and install new air supply piping from basin deck, down to basin floor, and distribution grid per attached drawing.
- Start-up and commissioning of new system

3.2 Digester basin modifications

- Demo existing coarse bubble aerators and piping in (2) digester basins
- Install 9" fine bubble diffusers (approx.4100) in one tank
- Provide and install new air supply piping from basin deck, down to basin floor, and distribution grid per attached drawing.
- Install 75 HP floating mixer in one digester
- Start-up and commissioning of new system
- Install reinforced concrete wall in one digester for a WAS holding tank.
- Remove existing 8" concrete floor
- Excavate rock for new 24" thick, 5' wide footing with 2' x 2' key
- Install footing per above tying footing into existing 8" concrete floor
- Install 24' thick, 20' tall concrete wall topped with 24" thick, 5' wide concrete beam
- New wall to be dowelled into existing concrete walls

4.0 Blower Upgrades

- Remove one existing 800 horsepower blower and motor
- Remove unusable blower suction and discharge piping
- Disconnect and remove existing 5KV feeder wire to blower
- Install one new motor starter to accommodate 600 HP motor
- Remove existing 150 KVAR capacitor
- Install new 100 KVAR capacitor
- Install new 5 KV cable and connect to new 600 HP motor
- Install new 600 horsepower blower manufactured by Turblex (Model KA22SV-GL225)
- Modify existing piping to accommodate new blower

Specified Equipment

- Turblex Blower - Model KA22SV-GL225 600 hp
- Base spring vibration isolation kit
- Motor winding RTD's
- Factory start-up (3 days)
- Reverse rotation switch
- Compressor x-y-z vibration probes
- Automatic discharge and blow-off butterfly valve

EXHIBIT J

PERFORMANCE GUARANTEE

SAVINGS GUARANTEE

Energy Systems Group guarantees that the program described herein will recover a total of \$1,542,970 in energy savings during the first ten (10) years of operation, beginning on the first day of the month following completion and final acceptance by the City of Bloomington regarding the installation of the equipment provided under this agreement.

If, at the end of any year during the guarantee period, the program has failed to achieve the annual guarantee of energy savings, Energy Systems Group will pay the City of Bloomington the difference between the annual energy guarantee and the actual energy savings amount. In no case, however, shall the full amount of the energy guarantee exceed the Contract Price.

Energy savings that are achieved by the upgrades and the modifications in the Agreement prior to completion of the entire retrofit project (construction period savings) will be added to the first year actual annual energy savings amount.

Energy Systems Group and the City of Bloomington also agree that if the actual annual energy savings amount exceeds the annual energy guarantee amount, such excess energy savings amounts will be either:

- Added to the savings for any future year before calculating the savings amount; or
- Billed back to and paid by the City of Bloomington up to any amounts paid by Energy Systems Group for savings shortfalls in a previous year.

This guarantee, whether or not exercised, is Energy Systems Group's sole liability with respect to any claim of energy savings.

BASELINE AND BASE YEAR

There is no direct way of measuring energy savings since instruments cannot measure the absence of energy use. However, the absence of energy use can be calculated by comparing measurements of energy use before and after implementation of the project. The "before" case is referred to as the Baseline. The baseline period, which is usually comprised of 12 recent and consecutive months of metered utility data before the implementation of the project, is referred to as the Base Year. At this time, the Base Year for this project is December 2001 through November 2002 for electric and December 2000 through November 2001 for gas.

The conditions inherent to the Base Year define the Baseline. The baseline conditions are identified through data collection and field observation. For this project baseline conditions may include but may not be limited to operational and environmental factors such as total flow of raw sewage, biological oxygen demand (BOD), levels of suspended solids and ammonia, temperature, etc. The certified plant operator documents this data monthly.

Regression analysis is used to estimate the relationship between energy consumption (dependent variable) and the baseline conditions that significantly contribute to energy consumption (independent variables). Energy Systems Group has collected actual utility bills and operations, but more detailed utility information is necessary to complete the regression analysis for the purpose of establishing the Baseline and Base Year and facilitating the measurement and verification of energy savings. According to CINergy, the electric service provider, this information is available and the City of Bloomington agrees to provide this information to Energy Systems Group. Because of further data collection and the result of the regression analysis, the City of Bloomington and Energy Systems Group will mutually agree upon the Base Year and Baseline conditions for the purpose of measurement and verification of energy savings throughout the guarantee period.

MEASUREMENT AND VERIFICATION OF ENERGY SAVINGS

There are a variety of ways to measure and verify the performance of energy conservation measures (ECM's) within your facilities. The selection of the most optimal and cost effective methodology for performance assurance depends on the particular ECM's and the needs of your organization. Consequently, Energy Systems Group recommends the Whole Building Main-Meter Approach (IPMVP Option C) for this project. With this methodology, savings are determined after project completion at the "whole building" or facility level using current year and historical utility meter data. Savings are calculated by analysis of utility meter and other relevant data using techniques from simple comparison to multivariate (hourly or monthly) regression analysis.

The purpose of the Main Meter approach is to provide systematic savings analysis for utility consumption, comparing a base year to a current year that has similar operational and environmental parameters. The required information is taken directly from a given facility's utility bills and operational and environmental data provided by the City of Bloomington. In order to isolate the impact of the ECM's alone, the influence of other complicating factors on energy consumption, such as environmental or process related factors must be removed. Regression analysis is used to normalize these factors to the base year. In essence, this adjustment process calculates what energy usage would have been in the base year, under the current conditions, for an 'apples to apples' comparison to current energy usage. The difference between current energy use and the "adjusted baseline" constitute energy savings. Regression analysis is performed using Excel Spreadsheets and/or ENRON/Omni-Comp's FASER™, which is the preferred audit software for commercial facilities.

Utility bill cost avoidance is how energy conservation measures are measured after project completion. By subtracting the Current Year Energy Cost from the Adjusted Base Year Energy Cost, the overall cost avoidance associated with that energy type is calculated. Cost avoidance is directly associated to the Energy Savings Guarantee. Each billing period during the term will be compared to the same billing period of the Base Year. The results of this analysis will be forwarded to the customer quarterly.

METHODOLOGY FOR ASSIGNING DOLLAR VALUES TO SAVINGS

Using the average cost per unit opposed to using the utility rate schedule for each meter increases the accuracy in assigning a dollar cost associated with the adjusted energy units. Charges for fuel adjustments base services, transmission, tariffs, and distributions will be included to ensure an 'apples to apples' comparison. This method also allows for updating savings calculations with changing rate schedules. In the event of a utility rate decrease, the utility rate(s) used to assign dollar cost will not drop below that of the

Base Year. Similarly, in the event of a utility rate increase, the utility rate(s) used to assign dollar cost will not be higher than that of the Base Year. In this project, savings have been guaranteed in dollars, not units of energy, therefore a lower limit, or floor, and an upper limit, or ceiling, must be set to that of the Base Year unit costs.

In summary, all information available in the energy consumption analysis field is utilized in the Energy Systems Group energy audit system providing the most comprehensive assessment of gas and electrical consumption available.

This saving guarantee is dependent upon these conditions being met. If the City of Bloomington does not make a good faith effort to abide by these conditions, Energy Systems Group, can at its option, modify the energy savings guarantee.

All payments between the City of Bloomington and Energy Systems Group will be made within 90 days of the end of each annual period. This Energy Savings Guarantee, whether or not exercised by the City of Bloomington, is Energy Systems Group's sole liability with respect to any claim of an energy savings shortfall.

Agreed to by the City of Bloomington and Energy Systems Group this 24th day of July 2003.

ENERGY SYSTEMS GROUP, LLC

By _____
James L, Adams, President

Date July 24, 2003

CITY OF BLOOMINGTON

By _____
John Fernandez, Mayor

Date July 24, 2003

EXHIBIT K

SUPPORT SERVICES

ENERGY AUDITS

As part of the Energy Guarantee, Energy Systems Group, LLC will provide annual energy audits for the annual sum of \$2,500. The initial annual energy audit fee will be billed upon Final Acceptance of the Project, and subsequently billed annually through the 10-year period of the Energy Guarantee.

During the term of the Agreement, Owner may cancel the annual energy audits by providing written notice to Energy Systems Group, LLC at least thirty (30) days prior to the beginning of the next annual guarantee period. If Owner makes such request to cancel the annual energy audits, the parties stipulate and agree that the energy savings guaranteed by Energy Systems Group, LLC during the term of the Agreement shall be considered fully satisfied. Both parties further agree that upon cancellation of the energy audits to be provided for under this section, Energy Systems Group, LLC will not longer be obligated to perform the remaining annual energy audits.

Additionally, if Owner fails to pay the annual energy audit fee within 60 days of receipt of the annual energy audit fee invoice, Energy Systems Group, LLC has the right to terminate this Support Services Agreement. In this event, both parties stipulate and agree that the energy savings guaranteed by Energy Systems Group, LLC during the term of the Agreement shall be considered fully satisfied. Both parties further agree that upon this occurrence Energy Systems Group, LLC will no longer be obligated to perform the remaining annual energy audits, and the energy savings guarantee contained in the Agreement will be considered satisfied in full and the Guaranteed Energy Savings Performance Contract will be terminated. The cost of the annual energy audit fee will be escalated at three percent (3%) per year.

Energy Systems Group, LLC agrees to file audit with the Department of Commerce annually.

Agreed to by the City of Bloomington and Contractor this 24th day of July 2003.

ENERGY SYSTEMS GROUP, LLC

By _____
James L. Adams, President

Date July 24, 2003

CITY OF BLOOMINGTON

By _____
John Fernandez, Mayor

Date July 24, 2003

**Res 03-16 Authorizing the City
to Enter into an
Energy Savings Contract with ESG
for Improvements to Dillman Road
Wastewater Treatment Plant**

**Futher Information in the
Council Office**

June 20, 2003 Proposal

June 30, 2003 Board Briefing Packet